



STATE REPRESENTATIVE
Garey Bies
1ST ASSEMBLY DISTRICT

**Testimony of Representative Garey Bies
Assembly Committee on Criminal Justice
Assembly Bill 409 – Investigation Officer-Involved Deaths**

Chairman Kleefisch, committee members. Thank you for the opportunity to submit testimony on Assembly Bill 409.

Before you look at this bill two questions need to be asked. The first question is, when a death of a person occurs and a law enforcement officer is involved, should their own agency investigate the incident? The second, is should there be an independent review of that investigation?

The law enforcement officer(s) - involved, should have peace of mind that all questions were answered leaving no cloud of suspicion. The victim's family should have the assurance the investigation was complete and accurate. And the public should have confidence that the investigation was handled properly and without bias.

AB 409 has been a constant work in progress. Over the last several months I've met with different law enforcement organizations, sought advice from District Attorneys, law professors, DOJ and talked with victim's families.

The bill before you today will likely see additional changes after today's hearing. As I've always said throughout this process, good ideas are always welcome.

I've approached this bill in three parts. The first being, the initial investigation of the incident. Under this bill, every law enforcement agency is required to have a policy in place for investigating officer-involved deaths. This includes asking an outside agency to be the lead on the investigation. The team must consist of at least three investigators, with two of the three being from the outside agency leading the investigation.

The second part is determining the officer(s) -involved fitness for duty. AB 409 would require a blood sample to be taken but no analysis of the blood could be done without the approval of the officer or a court ordered search warrant.

The third part establishes a five-member independent board to review the investigation report to ensure that all aspects of the investigation were thoroughly handled and answered.

First for Wisconsin!

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Questions have been raised as to whether this bill infringes on the constitutional authority of the District Attorney. However, this bill doesn't limit what charges a DA can file or when they can file them. It only requires the DA to release the investigation report over to the review board.

As I mentioned before, this bill is a work in progress. My goal is to have a bill that both law enforcement and the public can embrace as good policy. I appreciate all the feedback to date and look forward to a constructive discussion today that can move everyone forward in a positive way.

Once again thank you for the opportunity to testify on Assembly Bill 409. I am happy to answer any questions you may have.



CHRIS TAYLOR

STATE REPRESENTATIVE ♦ 76th ASSEMBLY DISTRICT

Testimony in support of AB-409

Assembly Committee on Criminal Justice

By: Rep. Chris Taylor

December 12, 2013

I would like to thank Chairman Kleefisch for holding a public hearing on Assembly Bill 409 and Rep. Bies for his leadership and work on this bill.

I appreciate the ability to speak in support of this bill. Out of all the bills I work on, this is really one of the most important. It is important to families whose loved ones have been impacted by officer involved deaths. It is important to our communities and neighborhoods to make sure the investigation of officer involved deaths is as transparent and unbiased as possible. And I believe it is extremely important to law enforcement, who have the hardest job in the world and whose job is dependent on the trust of our communities. This bill helps ensure all of that.

The environment necessitating this bill has affected thousands of people across the nation, and in the past year it has become very personal to me and my constituents. The shooting death of Paul Heenan, which occurred only miles from my home, really shook my neighborhood. But Heenan's death joins a list of others, including Derek Williams, a man who died in the backseat of a law enforcement vehicle while being taken into custody in Milwaukee, and Michael Bell, who was killed in front of his family in Kenosha. Not only did these events have an effect on the friends and families of these men, but they also took a toll on the officers involved and on the communities where the men killed and officers involved lived.

Representative Garey Bies and I have worked together to draft this bipartisan legislation in order to address and attempt to remedy the aftereffects of deaths such as those of Bell, Heenan, and Williams. We have consulted with law enforcement officials, prosecutors, law professors, and representatives from other state agencies in order to craft these proposed statewide standards. This bill aims to provide a reasonable framework to make sure investigations when officer involved deaths occur are independent, comprehensive and unbiased as possible. It does this primarily in two ways: Requiring the involvement of outside investigators and creating a review board that can be utilized to make sure every stone in the investigation was adequately and accurately examined. This bill in no way changes or impacts the constitutional authority of District Attorneys to make charging decisions. That remains their sole prerogative.

Wisconsin has a unique opportunity to be the first state in the country to enact an independent framework for the review of officer-involved deaths. Representative Bies and I have illustrated that we are willing to listen to the advice of the different stakeholders in this bill and make alterations so that this necessary and commonsense proposal meets the needs of Wisconsinites – both civilians and officers.

Thank you for your time. I would be happy to answer any questions you have.

Michael Bell Public Hearing Comments

Professional Background:

USAF Lt. Col. Retired

Senior Command Pilot KC135 (Boeing 707 modified for Air Refueling) Instructor rating

Last two assignments: 128th Air Refueling Wing, General Mitchell Field. 126th Air Refueling Wing, Chicago O'Hare.

Assigned to Strategic Air Command, Single Integrated Operations Plan (Nuclear War)

Served Operation Desert Storm, Bosnia-Kosovo, Afghanistan, Post 9-11

- Profession authorized to use deadly force, trained small arms & M-16
- Worked with and had Security Forces under my charge
- Split second life/death decisions over 25 years
- Understand losses that occur in combat situations to friendly fire
- Exposed to Safety and Mishap Investigations & NTSB investigations regarding mishaps
- 91-204 Safety Investigations and Reports

Police officers are oftentimes our heroes

- Lt Brian Murphy shot 15 times at the mass shooting at the Sikh temple in Oak Creek WI
- State Trooper Les Boldt saves bridge jumper Anita Zahn on the tower bridge in Green Bay WI
- Sheriff Deputy Vesperman and Police Officer Dresen for their actions that saved the life of a driver trapped in his partially submerged vehicle in the Big Green River in May.

Tragedy of 11/9/04

21 year old son Michal Edward Bell was met in front of his home by a police officer. Confrontation, scuffle and tazing, four eyewitnesses, and officer calls he has my gun, (direct contradiction to eyewitnesses), another officer places gun directly to his head and fires deadly shot. Incident occurred directly in front of mother and sister.

2:30 AM phone call. First reaction, Michael doesn't ever do anything to be shot. To my knowledge he has never even fired a gun.

- Initially accepted the investigation to be conducted
- It became apparent that the investigation was deeply flawed and was the polar opposite of my USAF experience.
- Asked for Inquest. DA denied.

Rush to judgment by KPD, within 48 hours police completed review and ruled justified.

- Witnesses were not interviewed
- Crime lab report: No DNA or Finger Prints on retention holster or gun.
- Officers never sequestered, put in a room together for several hours.
- Medical examiners report irrefutable
- Character assassination opposite to knowledge of teachers, friends and family.
- No drugs in blood stream
- Brought dogs into to search Michael's car and his home. Nothing Found.
- Bell has no criminal record
- We questioned the investigation from beginning & continued to draw attention to it.

No Place for Help

- Attorney General Peg Lautenschlager says, "The AG cannot call for an investigation."
- Governor Doyle says, "He has no authority to call for an investigation."
- Contacted FBI, "You are starting way too high." Kenosha office has since been closed.
- As per Senator Herb Kohl's instructions, I hand delivered a request to US Attorney to investigate. Eastern District WI didn't even respond to my letter. (Side note, November of 2012, I gave the same letter to the US Attorney).
- Contacted every Associated Press Office in the nation.
- Every national paper, magazine, and TV investigative personality. (Only response was Erin Brockovich)

District Attorney runs for Circuit Court Judge

Endorsed by multiple police chiefs (see appendix) as he reviews shooting death of Bobby Sherrod (the fourth officer involved shooting by KPD in 20 months).

Looses election, refuses to grant an inquest to Sherrod family and declares 4th KPD shooting justified.

Three weeks after election loss, officers involved to get state award for bravery from WPPA. Nominator for the award has yet to come forward, remains secret.

Enough is enough. Started ad campaign with national and statewide papers

Filed Federal Civil Rights Law Suit.

- During discovery, the budding cover up by the KPD unraveled.
- Settlement is reached for \$1.75 Million
- Settled without confidentiality or non-disclosure. Files remain open.

That officer has since committed suicide. (appendix)

The system is broken.

If AB409 and independent review were in place in 2004, things may have gone much differently:

- Officers **would have** been sequestered, before being interviewed by detectives.
- Eyewitnesses **would have been** fully interviewed to get a full picture of what happened that night.
- The incident area **would have been** thoroughly photographed including the driver's side mirror; and the mirror **would have been** analyzed for evidence regarding contact with Strausbaugh's holster or weapon.
- The medical examiners report would have been read. The path of the bullet that killed Mike Jr. **would have been** charted, further confirming that Ofc. Gonzales was to the right of Mike Jr. when he fired – a crucial aspect of the investigation.

All these flaws were revealed NOT by the KPD, or the DA, but by the efforts of private citizens. Similar to other Wisconsin cases.

Javier Prado

The Milwaukee Police Department and an inquest jury cleared Officer Glover of any wrong doing. Yet additional information from private citizens, caused the DA to charge Glover. Glover took his own life. The Prado family settled for a record amount, confidentiality agreement in place. Filed sealed.

Derek Williams

In the Derek Williams case the officers were responsible for Derek's wellbeing once they took him into custody. Williams has no criminal record. However despite his pleas for help, they refused him aid and he died. An inquest jury found reason to believe the officers should be charged and the special prosecutor refused. Even with this gross and tragic violation of standard police procedure the Milwaukee PD and the DA both found the officers free of any wrongdoing.

Paul Heenan

Musician Paul Heenan, dropped off in front of his home after a night out with friends, enters an identical dwelling next door by mistake. Heenan has no criminal record. A police officer shoots Heenan. Officer is cleared by department and DA of any wrongdoing. Yet weeks later, Chief of department asks that officer be removed after several uses of excessive force and over 100 police policy violations revealed. Officer resigns and Chief retires. Federal civil rights law suit still pending.

Larry Jenkins (Mother will speak)

An Impossible Record of perfection

Our research, and that of others, (see appendix) have not been able to find a single unjustified ruling by a police department, a police and fire commission or a coroner's inquest in the state of Wisconsin since Police and Fire commission were formed in 1885.

Currently, Law enforcement departments either investigate themselves, or hand-pick a department that reviews them.

Almost all of us agree that self investigation is fundamentally wrong, yet what about hand picking your review board?

Keith Gabriel of Appleton WI, an ex marine Vietnam Veteran, was lighting off bottle rockets from the front porch of his home. Police were called, some type of exchange occurred and an officer fired his weapon killing Gabriel. The Appleton PD asked the Green Bay PD to conduct the review. Of the five officers on the review board, one was picked by the Appleton Chief and another was picked by the Officer involved with shooting Gabriel. Shooting was ruled justified.

Why the Greenbay PD? Cozy, sloppy, friendly, recipricol review? (when you need it, we will be there for you)

Please name one department that found another department's shooting unjustified?

To our knowledge, no Wisconsin Police or Sheriff's Department or Department of Criminal Investigations has ever found another departments shooting unjustified.

Clear frame of mind to take someone's life

My son Michael was being held in a bear hug with hands behind his back (as seen by eyewitnesses) and officer calls "he has my gun."

Another officer steps between the officer who is holding Michael and the officer who says he has my gun, places a gun to my son's head and fires not once, but twice.

Not a rational choice. When the most obvious questions of an investigation are not answered, it is a bad or incomplete investigation. In hopes of answering the obvious questions, we had to ask, "Was the officer is a clear frame of mind to take someone's life?"

Currently, there are no statewide requirements to insure that an officer was in a clear frame of mind to take someone's life.

And some local standard operating procedures are so poorly written that even if an officer was high on heroin and killed somebody, that evidence is not admissible in a criminal proceeding (see appendix)

Could a Law Officer in Wisconsin ever under the influence of drugs or alcohol?

The right to take a life or when in custody a life is lost while the officer is under the influence of alcohol, narcotics or illegal substance is fundamentally wrong.

Our development team selected from 120 cities nationwide, 6 cities that had civilian oversight mechanisms that reviewed law enforcement related deaths and compared those six to our process in Wisconsin. Even though Wisconsin State Statute 62.13 makes the Police and Fire commission one of the most powerful review boards in the nation, we found these problems.

- Those appointed typically lack experienced decision making able to review evidence related to police work.
- Conflict of Interest as officer related fatalities make the city a defendant.
- Scope is very broad to include employee issues, contracts, citizen complaints
- In almost all cases, No resources dedicated for independent investigation

AB 409 was based on USAF Mishap Investigation and NTSB protocol. In Wisconsin, we have two foundations of something similar in the Government Accountability Board and the Judicial Commission.

AB 409 creates an external review by independent authority in place of the internal organizational review that occurs now.

Board is composed of law professionals.

- Must be composed of more than a prosecutor and law officers. (current system in place) If you remove the judge or the scholar, that is all that is left.
- If not criminal justice or criminal law scholars, what profession or community member is qualified overall to review a death?
- Innocence Projects are led by Justice/Law professors
- Who will speak on behalf of the person whose life was lost?

Why this bill is right:

- ❖ Law professionals reviewing law enforcement (removes institutional stake in the process)
- ❖ Sound foundation in NTSB, USAF MIB, Wisconsin GAB and Judicial Commission.
- ❖ An elected official is held directly accountable
- ❖ Review is completed by a respected independent authority
- ❖ Adequate resources for full and effective implementation of the process
- ❖ Creates a board that is effective for not only law officers, but also the community
- ❖ Assist low frequency departments with expertise regarding officer related fatalities

Additional concerns: - An officer is going to hesitate because of a review board.
- Michael's driving under influence, criminal or poor judgment?
- Others

Conclusion

One has to ask: What are opponents of this bill afraid of? Police are still going to be reviewed by other police (just not entirely from their own department), and the review board is simply going to issue findings and recommendations based on the investigations by the investigative teams. How can that be anything but good for police and the community – unbiased investigations reviewed by a fully independent board of experts? Good officers and good departments are not afraid of independent review, they embrace it.



WISCONSIN SHERIFFS & DEPUTY SHERIFFS ASSOCIATION

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Memorandum

To: Members, Assembly Committee on Criminal Justice
From: Wisconsin Sheriffs & Department Sheriffs Association and Badger State Sheriffs Association
Date: December 12, 2013
Re: **Assembly Bill 409, relating to investigation of deaths involving a law enforcement officer**

The Wisconsin Sheriffs & Deputy Sheriffs Association (WS&DSA) and Badger State Sheriffs Association (BSSA) represent a vast majority of law enforcement officers throughout Wisconsin. The goal for every police agency is to provide an open, honest, and ethical department that ensures transparent and impartial investigations. This is especially true of incidents and subsequent investigations involving law enforcement related deaths.

To that end, WSDSA and BSSA support legislation that would require certain guidelines regarding the investigations of deaths involving law enforcement officers. Specifically we support the following:

- **Departmental Policy Covering Officer Involved Deaths:** It is imperative for police agencies to have guidelines in place prior to an officer involved death. This policy should outline the procedures and protocols to be utilized in the investigation and would ensure that a complete and thorough investigation is conducted. Pre-existing policies are currently required for several police related issues such as use of force, blood borne pathogens, and vehicle pursuits. This legislation should require agencies to have a policy regarding death investigations.

Currently Wis. Stat. § 66.0511 (2) requires agencies to have a use-of-force policy that is available for public scrutiny. This statute could be modified to include a portion for how officer involved deaths would be handled. This legislation would place the burden on the agency to have a practice in place. It is impractical to require the Law Enforcement Standards Board to review and approve all of policies of every department in the State.

- **Timely Investigations:** It is not fair to the victim, the victim's families, the officers involved or the public for these investigations not to be timely. The legislation should require that the investigation be conducted in a timeframe so it does not stop the workflow of the investigation. Once completed the District Attorney should review the investigation as soon as he or she is able and request an outside review if they so choose.
- **Fair and Impartial Investigations:** It is imperative that a fair and impartial investigation be conducted. It is our belief that this is best accomplished by having an outside agency conduct the investigation into the law enforcement related death incident.

(Over)

Some agencies have a policy where an investigation team, made up of multiple agencies, is established prior to the incident. The agency involved may have an officer on this team. This would be acceptable as long as the majority of the officers on the investigative team are not employed by the jurisdiction where the death occurred. It is important that the investigation is kept confidential until it is concluded so that outside public influence cannot taint the investigation in any way, shape or form.

Conclusion

In summary, while WS&DSA and BSSA support timely and transparent outside investigations of officer related deaths, we have concerns with AB 409 as currently drafted.



December 11, 2013

Representative Joel Kleefisch
Chair, Committee on Criminal Justice
Room 307 North
State Capitol
Madison, WI 53708

Representative John Spiros
Vice-Chair, Committee on Criminal Justice
Room 17 North
State Capitol
Madison, WI 53708

RE: Assembly Bill 409

Dear Committee Members:

With the introduction of Assembly Bill 409, relating to the investigation of deaths involving law enforcement officers, we wanted to take this opportunity to provide you with an overview of the City of Milwaukee's comprehensive investigative process for critical incidents involving police officers. Unlike AB409, our process includes all critical incidents, in addition to officer-involved shootings and in-custody deaths.

Over the last five years, we have implemented significant changes in the review of critical incidents in order to provide more accountability and to better serve the residents of the City of Milwaukee. For all critical incidents, we mobilize a Critical Incident Response Team (CIRT). This team includes highly trained and experienced individuals from the Milwaukee Police Department and three other outside agencies: the Milwaukee County District Attorney's office, the Fire and Police Commission, and if a death is involved, the Milwaukee County Medical Examiner's office. Each agency responds to the scene and independently investigates and reports its findings. More specifically, the Executive Director of the Fire and Police Commission, the District Attorney (or one of his Deputies), and the Chief of Police, (or one of his Assistant Chiefs), along with investigators from their respective offices, will respond to the scene of a critical incident. Findings are ultimately shared among members of the CIRT and the public. All correspondence and reports from the CIRT are subject to open records laws.

Also, since the beginning of 2013, the City of Milwaukee employs a Critical Incident Review Board (CIRB), whose primary purpose is to investigate critical incidents for misconduct and address any gaps or issues in policy and training. Its reports are submitted to both the Chief of Police and to the Fire and Police Commission for action on its recommendations. Members of the CIRB have more experience in investigating critical incidents than any other group in the State. Since the recent implementation of the CIRB, there have been multiple instances of policies and training protocols that have been modified to further protect the residents of the City of Milwaukee.

The review of critical incidents is a core function of a local district attorney's office, and the Milwaukee County District Attorney's Office's experience, through the review of numerous incidents, underscores the necessity of an on-scene response and immediate collection of witness statements. The investigators from the District Attorney's Office are sworn law enforcement officers, many of whom have extensive criminal investigative experience. The representatives of the District Attorney's Office review the scene of the incident and interview all critical civilian and police witnesses immediately thereafter. This process enables the District Attorney to gather as much evidence as possible contemporaneous with the incident. The District Attorney's Office conducts follow up investigation as necessary in each case, working closely with the Milwaukee Police Department and other investigating agencies. On occasion, members of the CIRT have sought the assistance of the United States Attorney's Office or the Wisconsin Department of Justice in the review of a critical incident.

If the critical incident results in the death of a citizen, all members of the CIRT will have direct contact with the Milwaukee County Medical Examiner's Office to learn about the cause and manner of death of the citizen, in addition to any other evidence gathered during the autopsy. Representatives of the District Attorney's Office then contact the family and loved ones of a deceased citizen, meet with them to share the findings of its investigation of the critical incident, and gather additional information requested by the family.

For all critical incidents, the Fire and Police Commission publishes a final public report together with any necessary policy or training recommendations. These reports are available online to the public and are submitted to the city's Common Council for a public hearing that is broadcast on cable television to maximize transparency of the process. We encourage you to review these comprehensive reports. They are located at: <http://city.milwaukee.gov/fpc/Reports>. As you are aware, the Fire and Police Commission is a civilian board. Members serve a five-year term and are appointed by the Mayor and approved through the Common Council after a vigorous process of public hearings that was instituted this calendar year.

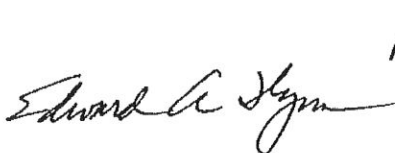
Every critical incident is investigated thoroughly by all members of the CIRT and is taken very seriously. Since these changes have been implemented, we are not aware of any other police agency that undergoes stricter scrutiny in its review of critical incidents in Wisconsin. We have strived for increased transparency in the process of investigating critical incidents and continue to consider input from experts, as well as the public, on the fairness and effectiveness of our efforts. As always, our most important goal is to conduct fair and thorough investigations so the public can continue to have confidence in its police department as well as its government.

The Milwaukee Police Department takes thousands of people into custody each year. While critical incidents involving police officers seldom occur, they are given the highest level of priority and attention by the CIRT. The retroactive review of a paper investigative file is not an adequate substitute or supplement for a ground level investigation undertaken immediately upon the occurrence of a critical incident. Any move to supplant the procedures currently at work in Milwaukee County will need to be accompanied by substantial independent resources to match the quality of investigation and review collectively assembled by our public safety professionals.

Furthermore, a fully staffed, independent agency that responds to critical incidents, or for that matter, criminal misconduct investigations, is imperative for ensuring that local law enforcement is held accountable for any wrongdoing.

Thank you for your time. We would be happy to provide you more detail or discuss any concerns you may have. Please coordinate with Paulina de Haan, Legislative Fiscal Manager for the City of Milwaukee at 414-286-3336 or via email to paulina.dehaan@milwaukee.gov.

Sincerely,



Chief Edward Flynn
Milwaukee Police Department



District Attorney John T. Chisholm
Milwaukee County



Michael G. Tobin
Executive Director
Fire and Police Commission

Cc: Milwaukee Delegation
Speaker Robin Vos
Representative André Jacque
Representative Jim Ott
Representative Erik Severson
Representative Garey Bies
Representative Frederick Kessler
Representative Evan Goyke
Representative LaTonya Johnson
Senator Lena Taylor
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December 12, 2013

TESTIMONY IN FAVOR OF AB 409

It is with great pleasure that I come before you today to testify in support of AB 409. This bill represents an important first step to insure that law enforcement officials respect the Constitutional rights of the people of Wisconsin. While the vast majority of law enforcement officials indeed serve and protect residents, citizens and visitors in Wisconsin, sadly and occasionally, rogue police officers violate the state and US Constitutional guarantees to be free from unwarranted abuse by police.

AB 409 represents merely a first step in providing an appropriate safeguard in the worst-case scenario of Constitutional abuse by law enforcement officials, i.e., the taking of someone's life by such officials. From my perspective, such independent review should happen in all cases of police brutality.

For example, I represent a middle school student with emotional disabilities in Sun Prairie who had his Constitutional rights violated when Officer Brandon Lingle slammed his head to the hard school floor without provocation earlier this year, giving my client a concussion and bleeding in his eye. It also traumatized my client, who now is fearful of this police liaison officer who continues to maintain his post at Cardinal Heights Upper Middle School. Fortunately, this incident was caught on a school security camera providing an excellent view of this Constitutional violation.

My client's mother, who is a low-income single parent, sought an investigation by the Sun Prairie police, but that department merely informed her that Officer Lingle's actions were appropriate. As a result, she retained me and I have filed a federal lawsuit (Case No. 13-cv-414, W.D. Wis.) on my clients' behalf to enforce his Constitutional rights. In order to successfully prosecute this case, I have obtained an independent expert police conduct report, which has identified multiple violations of my client's civil rights by Officer Lingle and the Sun Prairie police department, which clearly failed to provide appropriate supervision and discipline in this case.

The citizens of Wisconsin should not be forced to file a federal lawsuit to protect their Constitutional rights when police officers abuse them, especially when law enforcement officials kill them. AB 409 takes an important first step to protect everyone from rogue police officers who kill anyone in Wisconsin. I urge the Committee to promptly pass this bi-partisan measure.



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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December 12, 2013

Representative Joel Kleefisch
Chairman, Committee on Criminal Justice
Room 307 North, State Capitol
Madison, WI 53708

Dear Chairman Kleefisch and Members:

As Attorney General, I believe the integrity of and public confidence in law enforcement, prosecutors, judges, and the entire criminal justice system is vital to public safety and a free society. That integrity and confidence is never more important than in instances when the actions of law enforcement, trained to protect the public as well as themselves, result in death. Law enforcement knowingly work in dangerous circumstances with sometimes dangerous people. Knowing this danger, they train to save – not take – life.

This bill, however, is a solution in search of a problem. A review of current law demonstrates the efficacy, reliability, and integrity of systems currently in place to address these unfortunate events.

How are officer involved deaths investigated? Investigations in these instances are conducted by trained investigators. These investigations are often undertaken solely by or with substantial assistance from investigators from an outside agency. These investigators have taken an oath to uphold the law. Their continued employment in law enforcement depends on their honesty and integrity.

The results of these investigations are then shared with the District Attorney of the county in which the death occurred for a decision on criminal charging. District Attorneys may request additional follow up from police. They may request assistance from the state Department of Justice investigators or lawyers. Or, they may use a John Doe proceeding to gather further information. An elected District Attorney's review of these investigations ensures independence and provides accountability. Internal departmental investigations usually follow to establish whether a course of conduct was in compliance with department policy or standards.

Current law also provides District Attorneys with the authority to order that an inquest be conducted for the purpose of inquiring how the death occurred. A Medical Examiner or Coroner may also request that a District Attorney order an inquest. In the event the District Attorney refuses their request, the circuit court may be petitioned and order an inquest if it finds that the District Attorney has abused his or her discretion in not ordering an inquest.

Outside of the state criminal justice process, other mechanisms exist to ensure that officer involved deaths are carefully reviewed. These include the potential for Section 1983 actions and federal investigations.

These provisions, already current law, provide for multiple layers of independent review of police involved deaths. These provisions promote public safety and should inspire the public's confidence that police involved deaths receive substantial review by multiple actors independent of the agency involved in the incident.

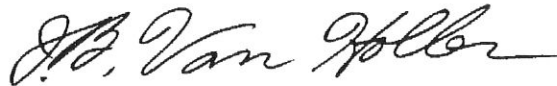
Adding yet another layer of oversight will not change the system's effectiveness. Further, in light of these laws, there has been no credible established finding that either law enforcement in their investigation or district attorneys in their decisions have acted contrary to law.

I have confidence in sworn law enforcement officers, District Attorneys, Assistant Attorneys General, Medical Examiners, Coroners, and Judges. While individuals comprising these positions of public trust may fail, we only know that because others in these positions have identified wrongdoing and done their duty. There simply is no credible reason to believe these actors have failed in their responsibilities to uphold the law when it comes to the most serious of criminal offenses.

For these reasons, I do not support Assembly Bill 409. I further conclude that should Assembly Bill 409 be adopted, justice will be frustrated if not compromised.

Finally, at the time the bill was circulated, I responded to requests for comment. My view and position on the bill has not changed since that time.

Sincerely,

A handwritten signature in black ink, appearing to read "J.B. Van Hollen", written in a cursive style.

J.B. VAN HOLLEN
Attorney General

JBV:DFS/pss

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December 12, 2013

Re: 2013 Assembly Bill 409 (Relating to investigation of deaths involving a law enforcement officer) State Assembly Committee on Criminal Justice Public Hearing

Members of the Committee:

Thank you for the opportunity to speak before you today at this public hearing. I speak today in support of Assembly Bill 409. My name is Jonathan Safran and I am a civil rights attorney in Milwaukee. I have been involved in law enforcement misconduct cases for more than ten years, as part of my law practice over the past thirty years. I have reviewed numerous potential civil rights cases and I have been retained in numerous law enforcement misconduct cases. Many of these cases have involved serious injuries, damages, and even deaths.

Today, I wish to speak to you specifically about the case of Derek Williams, Jr., a twenty-two-year-old Milwaukee man who died in police custody in 2011. I have the privilege of representing Mr. Williams' three young children, through their mother and Derek Williams' long-time girlfriend. Derek died in the back of a City of Milwaukee Police Department squad car on July 6, 2011, all caught on police video and audio. Frankly, it is one of the worst videos that I have ever seen and heard, because you actually see and hear a human being die in front of your eyes. Mr. Williams begged for help due to his inability to breathe. The police officers did not believe him, they ignored his pleas for help, and he suffered tremendously before he died. This incident occurred following Mr. Williams' arrest for an alleged robbery. Mr. Williams died in the back of that squad car, after he collapsed once and possibly twice prior to even being placed into the car.

Initially, the Milwaukee County Medical Examiner's Office performed an autopsy and ruled the manner of death as "natural," which led the Milwaukee County District Attorney's Office, relying upon the Medical Examiner's determination, to initially conclude that no criminal conduct had occurred by the police officers involved. Prior to that initial determination, the Milwaukee Police Department investigation of its officers determined that no criminal conduct had occurred by any officers. A determination was also made by the Police Department that no misconduct had occurred, despite a police department rule requiring police officers to call for help immediately for a suspect "if medical treatment becomes necessary," a police department standard operating procedure requiring police officers to "continually monitor and remain cognizant of the condition of a person in custody," and a police department rule making it a duty of police officers to render first aid to a prisoner. The police officers appeared to have been trained by their department to believe that if a suspect in custody was talking, that he must be breathing, therefore, they failed to provide or request emergency medical care, until it was too

late. The City of Milwaukee Fire & Police Commission also “investigated” this incident, relying upon the determination by the Milwaukee Police Department, the Milwaukee County Medical Examiner’s Office, and the Milwaukee County District Attorney’s Office, and therefore, also determined that no misconduct had occurred by the Milwaukee police officers involved.

Only after being questioned by an investigative journalist with the Milwaukee Journal-Sentinel, Gina Barton, and being confronted with the fact that the Assistant Medical Examiner who signed the Death Certificate had never obtained and reviewed the police reports and had not obtained and reviewed the video, did the Milwaukee County Medical Examiner’s Office launch a new investigation into Mr. Williams’s death. Following that new investigation, the Medical Examiner’s Office changed the Death Certificate to reflect the manner of death as “homicide,” meaning “death at the hands of another.” That change in the manner of death determination caused the Milwaukee County District Attorney’s Office, in September, 2012, to decide to re-open its criminal investigation. Despite the new manner of death determination and the re-opening of the District Attorney’s Office criminal investigation, the Chief of Police for the Milwaukee Police Department issued a statement that he did not expect any officers to be criminally charged, and that no new internal investigation would be conducted.

After significant public scrutiny, the Milwaukee County District Attorney eventually requested the appointment of a Special Prosecutor and allowed for a public Inquest into Derek Williams, Jr.’s death in order to determine whether any criminal prosecution was warranted. Prior to this Inquest, for the prior twenty-five years in Milwaukee County, no Inquest Jury had ever recommended criminal charges against a police officer involved in a fatal shooting or in-custody death. Many in the legal community, as well as citizens of Milwaukee, have realized that the way in which inquests were handled, with the prosecutor as the only lawyer involved in the proceedings, with the victim’s family and their lawyers not involved, with no cross-examination, and with the prosecutor determining which witness to call and ask questions, that it was not surprising as to the usual result of no criminal charges being recommended. In addition, on only one occasion, in the prior twenty-five years in Milwaukee County, did the District Attorney ever criminally charge an officer, despite an Inquest Jury having cleared the officer.

In the Derek Williams, Jr. case, the Special Prosecutor did allow me, as the attorney for the Williams’ children, to see some of the evidence in advance, to sit through the entire public Inquest Hearing, and to even submit witness questions, many of which were asked by him. Over eight days, thirty-eight witnesses testified and approximately two hundred exhibits were introduced. This process reflected a more thorough and more independent review procedure. The Jury deliberated and reached a verdict on February 21, 2013, finding that there was probable cause to believe that three police officers had committed a crime. Five weeks later, the Special Prosecutor issued a lengthy report, including his opinions that some officers had been careless, some officers had used poor judgment, and some officers had delayed getting needed medical treatment for Mr. Williams, however, his decision was to not issue any criminal charges against the police officers involved in the incident. During the Inquest Hearing, some police officers refused to testify pursuant to their 5th Amendment privilege against self-incrimination, some were granted immunity in return for testimony, it was determined that the sergeant in charge of the scene did not write a report about the incident, including his use of force in doing a sternal rub on Mr. Williams, nor was he interviewed about his involvement. It was apparent that the initial investigation by the Milwaukee Police Department was not particularly thorough, as much

more information was obtained in the subsequent investigation and then presented during the Inquest Hearing.

The death of Mr. Williams, and the way in which the different agencies investigated this incident, has only led to heightened racial tensions in Milwaukee and has contributed to distrust by many citizens of the police, in addition to disappointment with the Fire & Police Commission, Medical Examiner's Office, the District Attorney's Office, and the Inquest process. While to-date no one has been held accountable to the Williams family for what happened to Derek Williams, Jr., perhaps the tragedy of his death will assist you and motivate others in the State Assembly and the State Senate to bring forth and approve the needed changes which this legislation has been introduced to address. The pursuit and potential passage of this legislation will help give the Williams family some comfort that his death was not all in vain and that something positive has come from this terrible event.

I believe that having a team of outside investigators to review law enforcement-related deaths, and then also having an independent board of review, not affiliated with the law enforcement agency or officer involved in the death, to thoroughly review evidence and reports so as to independently confirm that investigations have been thorough and complete, will help to insure more complete investigations, will provide for needed transparency, may result in future training, policy and rule changes, and will hopefully result in citizens regaining their trust of law enforcement officers and agencies. Thank you for allowing me the time to provide this information and my thoughts.

JONATHAN S. SAFRAN
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Samster, Konkel & Safran, S.C.

Committee on Criminal Justice
Representative and Chair, Joel Kleefisch
Room 307 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Subject: AB 409

Members of the Committee:

I served as chief of police in Madison for over 20 years. After my retirement, I went to seminary and now serve as a member of the clergy assigned to a church in Waukesha County. Over the years, I have written articles and books on the important task of policing and how it must improve. I have found, since my retirement, that I have gained a greater sense of objectivity and a better perspective about police. Don't get me wrong, I love policing and it is my love of it, and those who serve as police officers, that compels me to be here today.

A chief of police has two important and sometimes conflicting responsibilities -- his or her own officers and members of the community. He or she must, on one hand, be the leader of the police and, at the same time, the chief of and for the community. It is in the use of deadly force that these responsibilities come into conflict. If the chief, in a questionable shooting, decides in favor of the officer, the chief must be able to demonstrate to the community and convince them that the shooting was both lawful, within the stated policy of the department, morally defensible, and consistent with training.

On the other hand, if the chief finds the officer was at fault, even though the shoot was within the law (which, by the way, is quite broad), but not in accordance with department policy or training, there will be a backlash from many within the police department. This backlash could severely restrict or restrain progress within any police department.

I have had chiefs present this dilemma to me. My answer to them was that you must make the choice -- the community or the department. The proposed legislation before you today takes that choice out of the hands of a chief and presents it to an independent board of peers and colleagues outside the police department. If I was still serving as a chief, I would welcome and support this legislation.

I believe AB 409 will help, not hinder, police. Why? Because when police are viewed by citizens to have acted appropriately it builds trust and respect for them. It is the maintenance of that trust and respect which enables them to effectively carry out their duties with the support of the community. When police are seen by the community as accountable, they are supported. When they are not, that support dwindles and diminishes their effectiveness. Without public support, no police department can effectively do its job. Public support is an absolute and necessary part of policing a free society.

Today, we are a connected, information-laden society. Information, both good and bad, flows through our daily lives whether we like it or not. We cannot go about

our daily work without being subjected to this flow of information, much of which involves our police in one way or another. This information includes videos on the internet, from YouTube to Facebook, depicting police engaging in many questionable behaviors. There is a constant supply and posting of these videos which have been obtained under public record laws and others recorded on personal "smart phones." Today, almost anyone can be an investigator or reporter, as many of you well know.

Nothing deteriorates the public's trust and support of police more than when police take a life. When this occurs I can tell you that there is always questions, always suspicion on the part of many citizens. The situation is always more volatile when the death involves a youth or person of color. Historically, we have seen that these situations can result in civil disorder and damaged police and community relations.

When deadly force is used by police, the questions are always these: How can police investigate a fellow officer when they have to work together and depend on one another for their personal safety? How can police be objective in such a situation?

The hard fact is that they cannot. And neither can a district attorney who also must work daily with the police and who will naturally form bonds with them. And once having made a decision against police will find it surface again as an election issue.

An open discussion of this bill, listening to the voices of both those who have suffered the loss of a loved one by police, and those who hold the public's trust as police officers, will go a long way to help this proposal become law. I can assure you that really good police officers are never fearful of this kind of oversight and would welcome it.

Throughout my career, and years since, I have reviewed many proposals to increase police accountability. This, by far, is the most reasonable and achievable.

I urge your support of AB 409.

David C. Couper
Chief of Police (Ret.)
Madison, Wisc.

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David C. Couper
Chief of Police (Ret.)
Madison, Wisc.

Committee on Criminal Justice - Public Hearing on AB-409
c/o Representative and Chair, Joel Kleefisch
Room 307 North
State Capitol
P.O. Box 8952
Madison, WI 53708

To the distinguished members of the WI Criminal Justice Committee;

"Just the culture of the police department... people care very much about each other they depend upon each other so when something happens to one officer within a department, it effects everyone." - Tresa Martinez - Head of Critical Incident Stress Management for Madison Police Department

When an officer takes a life, should they be judged by those who depend on them, who care very much about them, including those who share a courthouse, cases and a D.A.? The answer is obvious. Change in the institution of law enforcement is difficult but I'm willing to bet it isn't as difficult as losing a child and being barred, ridiculed and threatened for seeking an unbiased investigation and review of the death of that child. What kind of parent wouldn't want all stones turned? What kind of leader would keep a parent from that information?

Over the past year, I have spoken very little about the emotional loss my family experienced and continue to experience after our friend and housemate Paulie Heenan was killed by former officer Stephen Heimsness on Nov 9th 2012. I am going to speak to it today but not concerning the loss of my dear friend. Instead, I'm going to address the devastating loss of what I had perceived my relationship to be with my hometown police department, and my belief that they had everyone's safety and feeling of safety at heart always. I believed that unless we, the public were posing a deadly threat, it wouldn't be so easy for officers to treat us like one. And finally, I blindly trusted our police department would always do the right thing no matter who was watching.

That is the very definition of integrity, isn't it?

The officers I personally know and care for are those kinds of people and surely, there are more. But I thought we were all on the same team and despite the fact that I had broken no laws or had given them no reason to consider me an adversary, on Nov 9th, when I needed them most, they treated me like nothing more than the means to incriminate my dead friend and an obstacle between their department and the preservation of a statewide, 125 year old record of humanly impossible perfection in their role and responsibility for civilians deaths.

Chief Wray said, when he walked the scene of Paulie's death, that he saw an officer with a history and an unarmed man down and therefore, controversy. What he left out but didn't need to say was how he feared that scene would impact him and his department, based on the unspoken value system he had fostered in the event of an officer-involved death and I'm sad to say, that fear appeared to dictate his every move over the year that followed.

The wagons circled furiously. A civil lawsuit was sure to come and discovery would reveal:

- 1.) A broken early warning system used to flag troubled officers and no recent effort to fix it.
- 2.) A failure to continue monitoring the police messaging system.
- 3.) An inexcusable lacking in crisis intervention training that actually ended with a living suspect.
- 4.) No meaningful screening to prove that officers are sober while working.
- 5.) Little to no meaningful and effective monitoring of the mental stability of officers.
- 6.) Officer Heimsness was the subject of 2 other investigations sparked by internal complaints. According to Chief Wray, the complaints were made before the night Officer Heimsness killed Paulie. In fact, a female officer had filed a complaint against him, for actions that amounted to breaking policy to teach her a lesson one month before Nov. 9th. When confronted, he first lied about his actions and then later admitted to them. Again, this was one month before killing Paulie and it never went into an early warning system to join the other violations that would have been in his file, had Chief Wray had reason to believe his job or someone's life, depended on him paying attention.

Paulie doesn't get a second chance and we can't do anything about that. But we can do something right now to show that we're paying attention, for our children, our loved ones, our neighbors known and unknown by enforcing a mechanism that ensures independent oversight and officer sobriety and please, if you're going to change anything, make it stronger, make it more strict. The only Chief who should worry about independent oversight and sobriety tests is one who won't bet his or her job on their department's honesty and sobriety and they're asking us to bet our lives on it? What does that tell us about that Chief and that department?

Honesty and sobriety shouldn't be options for officers, They should be enforced through a meaningful law.

On the morning of November 9th, just 9 days after we had moved into our apartment, I woke to my living room filled with flickering light, but not the kind you want or want your child to see coming through the windows of your living room.

It was some time after 3am, the dog was barking violently, my daughter was somehow still asleep and my husband Nathan and roommate Paulie Heenan were nowhere to be found.

I could hear talking coming from the hallway outside our front door so I went down to investigate. My husband Nathan was standing on the porch speaking with an officer. While that visual was something of concern, I was relieved to see my husband standing next to that badge and uniform. I opened the door and asked, "Where is Paulie?" The Officer asked, "Who is Paulie" and I replied "our roommate." MPD's presence meant, everything was going to be OK because, we were all on the same team or so I thought.

Months later, after reading the open records I learned that when the officer on my porch was interviewed by detectives, he reported that one of us had said our roommate was "out drinking." We never said that to him. It was an outright lie. Can you imagine? Why would he do that? And then, after learning it was Paulie, while we were trying to figure out how to tell his friends and family and how to tell our daughter, how to get her out of there, past the blood, under the tape, more than one officer was taking advantage of that vulnerability, asking leading questions while fanning false hope and reporting false statements. When I saw that in the record, I was devastated to find that the attempted incrimination of my dead friend and misrepresentation of my words... the bias had become evident within my very first contact with an officer that morning. I saw those badges and I felt safer and no one was there to protect me from that.

Later that morning, we learned what had happened between my friend Paulie and Officer Stephen Hiemsness. My friend Paulie had been dropped off on our street, severely intoxicated, and had accidentally walked into an unlocked home 2 doors down that I had almost walked into twice before, earlier in the week. Both houses have similar porches, entries and are the color blue.

The owner of the home walked Paulie back to our house and sometime after that, Paulie had become bothered and leaned into the homeowner in a confrontational manner. The homeowner grabbed Paulie's shirt, Paulie grabbed his arms and began pushing the homeowner backwards down the sidewalk. Both of Paulie's hands were visible. No weapons were present, no punching or kicking or screaming occurred.

Much to their surprise, an unidentified and unannounced, backlit man came up the sidewalk with a gun out and pointed at them and he began shouting commands. The homeowner did a double take over his shoulder before guessing that the man was an officer. He let go of Paulie and moved out of the way of the gun. The man shouted at Paulie to get down. Paulie didn't. He walked at the shouting man we now know to be former Officer Heimsness, who was also armed with a billy club, tazer, pepper spray, hand-to-hand combat and 15 years experience.

The homeowner ran around behind Officer Heimsness and yelled, "He's a neighbor!" He's a neighbor!" Paulie's arms were flailing, hands visibly unarmed and he would not get down and it is alleged that his arms and hands made contact with the officer in sloppy, less than coordinated manner. A back up officer came up the sidewalk and was standing near Paulie, the homeowner saw her standing close to Paulie and Paulie looked in her direction and it is said he then began to raise his hands and lower himself. Officer Heimsness shot 3 rounds into his hands and body, killing him. Officer Heimsness later stated on the record that his was pissed at Paulie for making him kill him.

In the days and months to follow former and current law enforcement professionals contacted my family, offering knowledge and help and with that, my husband and I knew we had to continue asking for an investigation and review done by those who had no stake in the outcome.

A local group called The Community Response Team planned multiple meetings with law enforcement and community members with hopes to get questions answered.

It took the Madison Police department 4 days to clear Paulie's name in the media. Up until then, MPD let the public believe that Paulie was involved in a possible burglary attempt, when they knew in the first hour of arrival that Paulie had accidentally walked into the unlocked home of a neighbor. On that same media date, just 4 days after the event and 2 months before the internal investigation was final, Chief Wray all by called the shooting justified.

On Dec 28th, District Attorney Ozanne announced that he could find no reason to file criminal charges against Officer Heimsness. We met with him and asked him some critical questions that had yet to be answered.

1.) The lead detective of the case said in front of 200 people at a community meeting that she cared for Heimsness "like family". How could her potential for bias be ignored and her work be considered objectively impartial?

2.) The homeowner was not able to readily identify Heimsness as an officer until his third look. Heimsness failed to announce himself, with his gun out, ready to shoot. These actions escalated the crisis. He posed a deadly threat to all involved and yet, the unarmed man appearing to try to just get the weapon out of his own face was reasonably considered "the deadly threat" on the scene?

3.) The homeowner was screaming "He's a neighbor, he's a neighbor" at the back of Heimsness' head. These shouts could be heard by a witness inside of the nearest house. Officer Heimsness claimed to not have heard the shouts. Why believe him? Why didn't Officer Heimsness, who knew back up was there and Paulie was posing no obvious deadly threat, why didn't he use the support of his back up and consider that the homeowner might have more information?

4.) D.A. Ozanne claimed to trust the homeowner as a 100% credible witness. The homeowner, in his statement claimed that back-up Officer Troumbly was standing near Paulie, to the left of him. Troumbly said she had a taser out before the gunshots. The homeowner said Paulie Heenan was lowering himself with hands going up before he was shot. Why is it OK for an officer to shoot someone who is unarmed, appears to be submitting, isn't touching the officer, and all while when back up is standing right there with a taser?

5.) The Sheriff's office supposedly shadowed MPD's criminal investigation. How can we even begin take this measure of oversight seriously when no one with the county thought to produce and share a report of that shadow investigation with the Chief prior to his decision to exonerate Officer Heimsness?

6.) Officer Heimsness claimed Paulie touched his arms and hands and possibly his gun. Why didn't they process the DNA swabs of all 3?

7.) Which round went through Paulie Heenan's hands and why was the gun powder residue sample from his hands not tested?

8.) What model of a "reasonable officer" did D.A. Ozanne use to determine that Officer Heimsness' barometer was reasonable?

9.) We asked D.A. Ozanne if he was close to anyone on the force. He admitted to having lifelong friends in law enforcement departments within Dane county. We asked him to recuse himself and transfer his power to charge to a jury. He declined and wouldn't give a reason why.

D.A. Ozanne couldn't answer our questions and stated that, with the information he had, he could not meet his burden of proof to charge officer Heimsness criminally but if troubling information were to arise, he'd take a deeper look.

My husband and I met with Chief Wray and Assistant Chief Davenport during the investigation of Paulie' Heenan's death. I repeatedly asked the Chief "Do you really trust Officer Heimsness to be honest, to possess sound judgment and as one to make good decisions? " He said "yes" every time.

Engaged community members repeatedly asked him to order an objectively impartial investigation to be done by a team that had nothing to gain or lose in the outcome. He wouldn't. We asked him for an objectively impartial review of the investigations and he said on more than one occasion that he wouldn't be opposed to changes like this in the future but he wasn't doing it for the "this" case meaning, Paulie's case. He said he trusted Officer Heimsness had used sound judgment but if any new information were to arise that contributed to the totality of the circumstances on Nov. 9th, he would consider looking further into the case.

If MPD would not minimize the potential for bias in their investigation and review process, we wanted Officer Heimsness off of the street, as did 107,000 petition signees.

We met with Mayor Soglin and asked him for help. He advised us to file a complaint with the police and fire commission.

With the help of a law enforcement expert, we prepared a complaint to submit to the police and fire commission that outlined what appeared to be obvious Use of Deadly Force policy violations committed by Officer Heimsness.

On June 20th, 2012 we mailed our complaint to The Police and Fire Commission. The PFC asked us to wait and wouldn't be specific as to why. We didn't wait.

On June 21st Chief Wray filed his own complaint against Officer Heimsness, seeking his termination. His complaint stemmed from the two investigations mentioned previously and it involved 118 counts of policy violations including death threats made towards county and coworkers as well as lying to detectives during investigations. One count was for a comment made 2 hours before Paulie's death when Heimsness wrote, "I'm the right cop for the wrong job. No witnesses, no problem".

Chief Wray's complaint somehow took precedent over ours and Officer Heimsness offered to resign with disability. This was no surprise to our well-seasoned attorney. Heimsness resignation stopped our complaint from be heard. It's no mystery that if our complaint had been heard and the PFC had moved to fire Heimsness for violated the use of Deadly Force policy, this would only bode well for a wrongful death suit against the city. Outside of making our complaint the priority, which would have ensured a hearing, The Police and Fire Commission made all other attempts to hear our complaint to no avail. A circuit

court Judge found it unreasonable to examine deadly force policy violations committed by a man who was resigning, even though with resignation, he could get a job next door in Middleton. Mayor Soglin, who suggested we file the complaint in the first place concurred with the judge and appeared pleased to see our complaint stopped.

Chief Wray stressed to the media that there was no connection between his request of Heimsness's dismissal based on the premise that he was untrustworthy and lacked good judgment and, his actions on November 9th 2012. He fired him for unreasonable behavior from Oct to December 2012 but drew a circle around 15 seconds on Nov 9th and claimed to have trusted him then. It strained credulity but was no longer unbelievable.

We contacted D.A. Ozanne and made our case. The Madison Police Department had labored over the history of Paulie Heenan: his computer, notebooks, his phone, his friends, his emotions. They searched and dug as far back as 8 years to find out why a young man in a Big Ten University town in Wisconsin would get intoxicated, accidentally walk into the wrong home, engage in light disorderly conduct with a neighbor and then struggle to identify or listen to a long-haired, shaggy bearded screaming man with a gun. They found nothing incriminating. After learning that Officer Heimsness had lied during investigations and had made statements an active shooter might make such as "I'm ready to go on a shooting spree up in dispatch" and "I'm going to kill somebody. Dispatch, coworkers, who ever," wouldn't D.A. Ozanne now be concerned enough to look deeper into the life, practices and habits of Officer Heimsness, the man who killed Paulie and wouldn't he want to look into any and all of his electronic communications involving the events of that night?

D.A. Ozanne was troubled by the information presented in Chief Wray's complaint and repeatedly stated that he couldn't be sure there wasn't more information out there, but he would not reopen the case or order inquest into Paulie's death or recuse himself for his obvious conflicts of interest. He was more comfortable leaving stones unturned.

We went to Chief Wray and asked him to explain how Heimsness' judgment could be trusted and with this new information, wasn't it time for that independent investigation and review. He repeated that he would be open for changes in the future, for not for this case. His parting words to us were "even if I agreed with you, he's resigning, there is no way to reopen the case." We responded by telling him that we would have to file a complaint against him.

Chief Wray announced his retirement a few weeks later.

Some might say there is nothing worse than losing a loved one in need, to those who are supposed to be helping them. It can get worse, when information regarding their death is intentionally untapped, for pride, for money, for whatever reason. It takes corruption and cruelty to a whole new level for those who are already suffering unfathomable loss and for what?

Please, pass AB-409. Responsible, honest oversight shouldn't be a choice for a Chief. Their jobs ought to depend on it.

Sound minds and sobriety shouldn't be options for officers, they should be mandatory.

The definition of a "fair and just investigation" isn't actually open for interpretation.

Life is invaluable and taking life is irreversible.

Anyone who claims unbiased investigations and sobriety tests make the tough job of officers even tougher should consider this: An intoxicated or mentally unsound or dishonest officer make a tough job, deadly.

In closing, there are officers who would have liked to speak here today, who believe that the time for AB-409 is now but, to speak out for external oversight of the Chief's work is a sure way to get fired. These officers need protection in a culture that only offers it if they tow the line of the Chief or of their Union executives, no matter what risk that line poses to their jobs, their integrity or their lives.

AB-409 would encourage law enforcement leaders to focus attention and resources on fostering, protecting and ensuring the honesty and well being of their officers, a measure that would directly benefit the lives of civilians and their trust in law enforcement.

Sincerely,

Amelia Royko Maurer
Madison, WI 53703

Board of Police and Fire Commissioners of the City of Madison

COMPLAINT

Filed against a commissioned officer of the Madison Police or Fire Department by an aggrieved person,
pursuant to 62.13(5), Wisconsin Statutes, and Rule 7 of the Board

Name of Complainant: Nathan and Amelia Royko Maurer

Street Address: 509 S. Baldwin St. Apt #2

City/Zip: Madison/53703

COMPLAINT AGAINST: MPD Officer Stephen Heimsness

STATEMENT OF CHARGES, made under oath or affirmation and subject to penalties for false swearing
(Refer to Wisconsin Statute 32.13 and Board Rule 7.):

We are filing a formal complaint against Madison Police Officer Stephen Heimsness for the shooting death of Paul Heenan on November 9, 2012, the very same incident that PO Heimsness was exonerated for in MPD Administrative Review, 2012-PSIA-0054. (Please note, in this document, all citations refer to this Administrative Review unless otherwise noted.)

We believe the Administrative Review overlooked a number of serious errors in judgment made by PO Heimsness during his encounter with Heenan that ultimately escalated the situation—unnecessarily—into one that PO Heimsness claims was a deadly force situation. First off, PO Heimsness never announced himself as an officer. Second, he completely misread the nature of the situation, choosing to pull out his gun when he clearly didn't need to. It is because of these mistakes, which set the course that led to Heenan's death, that we file this complaint.

It is our belief that PO Heimsness violated Madison Police Department Policy 6-100, which outlines when police officers can use deadly force. The pertinent section of this policy authorizes deadly force when an officer reasonably believes a lesser degree of force would be insufficient "in defense of oneself, where there is reasonable cause to believe one is in imminent danger of death or great bodily harm." This is the primary reason PO Heimsness gives to justify his shooting of Heenan. (Pg. 24, line 6; Pg. 29, line 18; and Pg. 30, line 4) We don't agree, however, that the criteria to use deadly force were met in this situation.

We turn to MPD Policy 6-200, which describes PO Heimsness' non-lethal options, to make our case. It says that officers "shall always employ force in a manner that is objectively reasonable based on the totality of the circumstances." We believe PO Heimsness incorrectly assessed the situation and improperly regarded the force considerations described in that policy.

Here we address the force considerations point by point:

- 1 The existence of alternative methods of control.
 - a While the Administrative Review found it reasonable for PO Heimsness to approach the scene with his gun drawn, we note that PO Troumbly made a different choice: She chose to pull out a Taser while approaching the scene. (Pg. 12, line 20) This is one alternative reasonable response. It was only after hearing PO Heimsness' gun shots that she drew her gun.
 - b The Administrative Review references the DAAT definition of *Preclusion*, the idea that you may only use deadly force to respond to behavior if no other reasonable option is available. In other words, deadly force is a last resort. PO Heimsness violated the spirit of this guideline when he ambushed O'Malley and Heenan by failing to self-identify as an MPD Officer before issuing commands, pointing a weapon in their direction and closing the distance between himself and the two men to such a degree that any reaction other than immediate compliance stood a strong chance of being regarded as an immanent threat to the officer's safety. As we elaborate later on, it was simply too dark in the middle of the 500 block of S. Baldwin St. to reasonably rely on a dark uniform, a gun, and commands that anyone could have spoken to sufficiently identify PO Heimsness as a police officer. The street lighting at the south end of the block at Baldwin and Spaight further obscured PO Heimsness by backlighting him, rendering the foreground view (Heenan's view) darker still. It strains credulity to suggest Heenan should have been able to identify PO Heimsness in the few seconds he had to process his encounter, especially when the full account of those few seconds by O'Malley describe a very unclear interaction with PO Heimsness. PO Heimsness crept up on the two men unannounced and only "announced" his presence by shouting and "gunning" Heenan. By that point he had very little space or time to exercise alternatives. PO Heimsness, by skipping crucial steps in the Use of Force Continuum, vastly constrained his options before he ever even made direct contact with Heenan.
- 2 Physical size, strength and weaponry of the person as compared to the officer.
 - a From the start, PO Heimsness saw that Heenan didn't have a weapon in his hands. His hands were clearly engaged elsewhere: holding onto O'Malley's shirt. (Pg. 6, line 30)
 - b Heenan wasn't a physically intimidating man. He was moderately tall and quite slight.
- 3 The nature of the encounter.
 - a When PO Heimsness stepped out from behind the tree, onto the sidewalk, he witnessed O'Malley and Heenan in a silent physical engagement. Heenan was holding on to O'Malley's arms and O'Malley was holding on to Heenan's lapels and both were moving at a walking pace towards O'Malley's house from the north end of S. Baldwin St., but Heenan wasn't punching, kicking or brandishing a weapon. (Pg. 6, line 28) We contend that this situation does not warrant an officer unholstering their gun. A reasonable officer would choose a less deadly force option such as a Taser or a baton.

- b In the midst of O'Malley's physical encounter with Heenan, O'Malley never felt concerned that the situation was going to escalate into a dangerous (i.e. life threatening) confrontation. (Pg. 17, pg_20; Video Testimony)
 - c Neither O'Malley nor PO Troumbly say they saw Heenan forcefully grab PO Heimsness' arm or go for his gun. O'Malley's video reenactment is clear on this point.
- 4 Actions of the person.
 - a Heenan's actions were threatening, but not on a level that needed to be responded to with deadly force. If PO Heimsness hadn't drawn his gun or had put it away early in the encounter, this situation would never have risen to a level that could possibly call for the use of deadly force. By choosing the gun, PO Heimsness created his own deadly force situation.
 - b Moreover and again, contrary to PO Troumbly's accounts (Pg. 12 Line 24), O'Malley places her directly to Heenan's left at the plum tree in the front yard of 511 South Baldwin (Pg. 11 Line 39, video statement), not 15-20 feet north of Heenan as she states. O'Malley's position 15-20 feet down the driveway between 513 and 511 South Baldwin would have made it impossible to see PO Troumbly if she was 15-20 feet north of where Heenan was standing when he was shot. This account further accords with O'Malley's characterization of Heenan's actions mere seconds before PO Heimsness shoots. O'Malley indicates that Heenan, with 4-6 feet of separation between himself and PO Heimsness, looked to his left and appeared to notice PO Troumbly and then placed his hands palms in on his torso and began to crouch in what looked like an act of submission before PO Heimsness starts to shoot (video statement). O'Malley makes a point of saying he could see Heenan's eyes at this point which would indicate that Heenan was looking left in his direction towards where PO Troumbly was standing according to O'Malley. If Heenan were no longer focused on PO Heimsness and in the act of submitting, PO Heimsness should not have needed to shoot him.
- 5 Exigent conditions (i.e., availability of backup, number of persons involved, etc.).
 - a PO Heimsness knew backup was present since, according to his own testimony, he signaled with his flashlight to PO Troumbly before he crossed Baldwin Street on his way toward the location of O'Malley and Heenan. (Pg. 6, line 14) If he knew backup was on the scene, why did he not try to establish better contact through radio, similarly, did PO Troumbly's failure to radio her arrival at the proper time add further confusion to the situation?
 - b Lieutenant Olivas' evaluation of PO Heimsness' perception of deadly threat relies on a peculiar train of logic. On page 24 of the review, Olivas states that, "The most compelling information [...] regarding PO Heimsness' perception of deadly threat to his safety comes from PO Troumbly." He goes on to say that her experience working with PO Heimsness and her sense that the sound of his voice accurately conveyed the gravity of his situation is the best corroborating evidence that PO Heimsness felt he was experiencing a deadly threat to his safety. However, the problem with this logic is immediately apparent when one learns that PO Troumbly's reaction to all of this was to sprint toward PO Heimsness and draw a non-lethal weapon, her ECD. PO Troumbly only

drew her side-arm when she heard PO Heimsness discharge his weapon. If she was so convinced that PO Heimsness was in a situation that called for lethal force, why, as she approached, did she not draw her gun instead of her ECD?

- c There was only one, apparently unarmed, suspect involved. (Pg. 6, line 24)
 - d During the time that PO Heimsness and Heenan were grappling, O'Malley was yelling, "He's my neighbor" in an attempt to deescalate the situation and inform PO Heimsness of the actual circumstances on the ground. (Pg. 9, line 1)
 - e A point that should be raised here is the account that PO Heimsness gives of his "tunnel vision" (Pg. 158, line 2 – *PO Heimsness MPD Case 12-320242*) and "auditory exclusion" (Pg. 23, line 9 - 2012-PSIA-0054). Lieutenant Olivas' judgment that PO Heimsness met the targeting requirements for the use of deadly force depends on a sound judgment by the officer that target isolation has been achieved. This is hard to justify if one is suffering from the above stress-induced impairments but would explain how PO Heimsness lost track of his back-up who was approaching from behind and to the left of Heenan when he shot him. PO Heimsness describes PO Troumbly's arrival on scene this way, "That's when I see Stacey Troumbly. It's almost like magic that she appears. I didn't see her before that." (Pg. 158, line 10 – *PO Heimsness MPD Case 12-320242*) PO Heimsness knew back-up had arrived on scene when he signaled to her and knew it was very likely she would be approaching from the north end of Baldwin (she did), how could he have been sure he wasn't putting her into the line of fire when he shot in that very direction? This inability to track even the general position of his back-up while deciding to deploy his firearm suggests a failure to prudently achieve target isolation.
- 6 The severity of the offense.
- a While PO Heimsness was dispatched to the scene for a "possible breaking and entering in progress" (Pg. 5, line 4), the actions he witnessed onsite and his decision to attend to these actions, rather than to enter the home where the 911 call originated and where it was then understood that concerns for safety were perceived, should have superseded the initial assumptions he had about the situation—and led him to draw a non-lethal weapon.
- 7 Whether the suspect poses a threat to the safety of officers or citizens.
- a Heenan's actions when PO Heimsness arrived on scene did not warrant PO Heimsness' choice to draw his gun. He did not witness an active fight, just two men talking on the sidewalk, then with their hands on each other, walking at a moderate pace and making no noise (no shouting or calls for help).
- 8 Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.
- a Heenan definitely resisted PO Heimsness' verbal commands, but it is unclear that he even understood whom he was dealing with. (Pg. 22, line 2) The failure by PO Heimsness to verbally identify himself as an officer leaves open the strong possibility that Heenan did not realize he was dealing with an officer of the law.

Finally, we want to expand on the issue of verbal warnings, as outlined in Policy 6-100. In that policy, it states: "Before using deadly force, officers shall, if reasonably possible, identify themselves and order the suspect to desist from unlawful activity."

In this regard, PO Heimsness clearly failed. He never announced himself. (Pg. 21, line 27)

We argue that it is reasonable to think that Heenan may have believed that PO Heimsness was somebody other than an officer. As stated in the Administrative Review, "It is not entirely clear that Heenan recognized PO Heimsness as a police officer." (Pg. 22, line 2) In this day and age of concealed carry in Wisconsin, it's not unreasonable to conclude that Heenan was concerned that he and O'Malley were being approached by an armed "good Samaritan" or vigilante set on remedying the situation.

Furthermore, the conclusion that Heenan was fixated on PO Heimsness' gun in anticipation of disarming and shooting him is flawed. PO Heimsness states that, "there would be no other reason for someone to attempt to disarm him other than to shoot him." (Pg. 30, line 18) But, if Heenan believed he was dealing with an armed vigilante, his intent may well have been solely to disarm—in order to protect himself and O'Malley. While we do not concede that Heenan was in fact reaching for PO Heimsness' firearm, if he actually had, this is a viable alternative explanation for why he would do so.

When PO Heimsness chose to draw his gun and approach Heenan and O'Malley, PO Heimsness knew he was creating a potential deadly force situation, and at that point, according to policy, he should have announced himself as an officer, "if reasonably possible." He clearly had the opportunity to announce himself as he approached (Pg. 7, line 19), but chose not to do so, and instead approached silently with his gun drawn, out of concern that the suspect would flee. (Pg. 7, line 20) This was a fatal error.

It is telling to note that while the MPD Administrative Review repeatedly cites eyewitness Kevin O'Malley's testimony and reenactment as further corroborating evidence that PO Heimsness was sufficiently identifiable at the time he confronted Heenan, upon review of the recorded testimony and reinforced by subsequent statements by O'Malley himself, O'Malley claims he could in fact NOT identify PO Heimsness when he first arrived on the scene, directly contradicting what is stated in the MPD Administrative Review (Pg. 7, Line 25) (Pg. 21, Lines 27-36). O'Malley states that he believed at first he was seeing a neighbor approaching to possibly to assist, then he says he thought it was someone walking a dog because of the way PO Heimsness was holding both hands out in front of him. O'Malley states that it was only after PO Heimsness began shouting "Get down, get down!" that he noticed the gun in PO Heimsness' hand and realized that he was looking at a police officer. This is when he disengaged with Heenan because he feared for his life, not because of the actions of Heenan, but because he was on the receiving end of a gun.

STATEMENT OF SOURCES OF INFORMATION Those matters stated in the foregoing Statement of Charges which are not based on my personal knowledge are based on information which I obtained from the following sources (show names and addresses of individuals, or otherwise identify sources of such information):

MPD Administrative Review 2012-PSIA-0054

Madison Police Department Policies 6-100 & 6-200

PO Helmsness MPD Case 12-320242

O'Malley Video Testimony

Kevin O'Malley
513 S. Baldwin St.
Madison, WI 53703

SPECIFICATION OF VIOLATION I believe that the conduct described in the above Statement of Charges is a violation of the following departmental rule or rules, ordinances, laws or other standards of conduct:

Madison Police Department Policy 6-100

Madison Police Department Policy 6-200

EVANSVILLE MUNICIPAL JUDGE

SINCE 1991

ATTORNEY THOMAS J. ALISANKUS

6241 N. FINN RD.
EVANSVILLE, WI 53536
(608) 921-1128

DECEMBER 8, 2013

TO THE WISCONSIN LEGISLATURE:

I AM WRITING IN SUPPORT OF AB409. AS A LAW ENFORCEMENT OFFICER FOR 32 YEARS, AS WELL AS A PROFESSOR OF CRIMINAL JUSTICE FOR THE PAST 21 YEARS, I CANNOT FIND ANY PLAUSIBLE REASON THAT JUSTIFIES A POLICE AGENCY INVESTIGATING ONE OF ITS OWN IN A LETHAL FORCE MATTER.

WHILE I DO BELIEVE AB409 COULD BE BETTER WRITTEN, I SUPPORT THE CONCEPT NOW; TWEAKS CAN, AND SHOULD BE MADE LATER. HOWEVER, THIS IS TOO IMPORTANT AN ISSUE TO ABANDON THE GOOD IN PURSUIT OF THE PERFECT.

FINALLY, I FIND THE REPORTED OBJECTIONS OF THE WPPA TO THIS BILL UNPERSUASIVE.

IF YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT ME.

RESPECTFULLY,

THOMAS J. ALISANKUS

To the distinguished members of the WI Criminal Justice Committee;

I write in strong support of AB409. It is a bill whose time has come. My experience over the past year fighting for a more fair investigation into the officer-involved death of my friend Paul Heenan has taught me that without an ombudsman-like body to ensure the impartiality of criminal investigations into deadly police-civilian interactions, we are only one bad shoot, or one questionable judgment call away from destroying that most precious of shared resources: trust.

I'm sure everyone would agree that the public depends on the police to ensure their safety and that the police depend on the public to support them in this mission. However, if the public suspects the action of bias in the investigation of the death of a civilian at the hands of police, without the proposed independent and objective review established by AB409, the public will always be caught in a classic "double bind". They will be asked to trust police internal investigations into officers' actions as conducted by law enforcement friends and peers predicated on the exemplary outcomes of past investigations, but at the same time face the fact that these records are the product of organizations with vested interests in the particular outcomes of those investigations; chiefly, outcomes that support the actions of the officers and organizations in question. It is a system that cannot *but* be vulnerable to accusations of bias. It is built into the very makeup of any self-investigatory process.

Currently, within the self-investigatory framework that WI police and DAs are forced to use, they can point to a virtually spotless record of justified police-involved civilian deaths going back 125 years. They use this impressive statistic to make the claim that, because they haven't made any mistakes, the public ought to trust the outcomes of their investigations because of their demonstrable integrity. Except that it's they who create the data that supports the statistics that they use to make the claim that the status quo is sufficient. Essentially, the argument goes, "we've investigated ourselves and found no examples of wrongdoing or improper procedure, so therefore, we should be trusted to continue investigating ourselves because of this exceptional track record."

This system does a disservice to law enforcement because it places an unreasonable amount of pressure on them to always come out of questionable deadly interactions with civilians looking justified. If they don't, they risk sullyng their spotless record, which is the only thing they can rely on to justify asking for the public's unquestioning support. AB409 breaks this pernicious cycle by taking the internal pressure off of the good officers and DAs to look the other way when bad officers do

the wrong thing. AB409 would help ensure that we keep the finest officers and reward their integrity without burdening them with the job of investigating their own. AB409 gives the public an expert impartial reference point that they can reasonably say has no interest in any particular outcome and is therefore the best arbiter when opinions differ on the outcomes of emotionally charged criminal investigations. Police deserve this, the public deserves this and that is why I urge you to support the passage of AB409.

Sincerely,

Nathan Royko Maurer

509 S. Baldwin St.

Madison, WI

Morrone, Vanessa

From: Erin Jonaitis <jonaitis@stat.wisc.edu>
Sent: Thursday, December 12, 2013 10:27 AM
To: Rep.Kleefisch
Subject: Testimony on AB 409

Dear Representative Kleefisch,

I came to the hearing on AB 409 today, but am not sure I will be able to testify before I need to leave -- so I am sending my comments to you. Please distribute them to your committee. Thanks in advance.

--

First of all, I want to thank my representative, Chris Taylor, for sponsoring this bill. I think this is an important conversation.

By day, I am a statistician, and this means I think a lot about evidence, and bias, and how to make decisions under uncertainty.

By night, I live in the Williamson Street neighborhood, just a mile from here. About a year ago we suffered a loss when one of our neighbors, Paul Heenan, was killed by a police officer.

The current process for adjudicating officer-involved deaths, in which local police departments are expected to investigate and discipline their own colleagues, creates two problems. First, it puts local police departments in an awkward position: ruling against a colleague could have repercussions for an officer, both personal and professional. Even people with honest intentions will have difficulty avoiding motivated reasoning in situations like this one. Second, it puts citizens like me in an awkward position by making it difficult for us to trust the people in charge of our protection. Even the appearance of a conflict of interest can weaken the relationship between the government and the governed. If something bad happens in my neighborhood, I need my neighbors to believe that calling the police will not make matters worse. If our officers get a reputation for covering up their own misbehavior, this belief will become hard to sustain.

The proposed legislation represents a reasonable and fair solution to this challenge. The involvement of disinterested parties in adjudicating officer-involved deaths promises to make the process fairer in fact, and moreover to reduce the appearance of conflicts of interest. This is not only good for citizens like me -- the increased trust it engenders will benefit our police force, too. Thank you.

Erin Jonaitis
Madison

Sent from my iPapaya

To the Committee on Criminal Justice

December 12, 2013

Good morning, my name is Auric Gold. I am one of three founding members of Wisconsin Carry, Inc., a non-profit gun rights organization with thousands of members across Wisconsin. I serve as a member of the Board of Directors and as Secretary of the organization. I am also a certified firearms safety instructor, pistol instructor, personal protection instructor and range safety officer. I am not here in my official capacity today. Wisconsin Carry has taken no official position on AB 409 because it is not strictly-speaking a "right to carry" issue. However I will tell you that there is strong support among our organization's leadership and membership for this bill. With that said, I state that I am representing myself today. But I believe that a substantial part of the "gun rights" community in Wisconsin agrees with my personal position on AB 409.

Why would the gun rights crowd care about this bill? I will tell you why. We are concerned about our safety, and when it is endangered by law enforcement officers we want to those officers to know they will be held accountable for their actions. Over the past few months I know of 3 or 4 incidents around the state during which our members were held at gun-point by law enforcement officers while our members were going about their normal business and violating no law or ordinance. One member was told twice he would be shot in the head if he made any movements. As you can well imagine, having a loaded gun pointed at you is not a pleasant experience, particularly when you have done nothing illegal or suspicious to warrant it.

Using or threatening the use of deadly force is lawful under circumstances outlined in Wisconsin's self-defense statute. While the Wisconsin Court of Appeals has ruled that police have no "absolute right to point their weapons" and are only allowed to do under the same circumstances that apply to everyone else in the state, [State v. Trentadue, 180 Wis. 2d 670, 510 N.W.2d 727 (Ct. App. 1993)] most district attorneys and judges do not seem to care. But I care, and I hope you will care also. I care because I know that once a gun is pointed at another person, it is an unsafe situation that can become deadly in a split second. I fear that it is only a matter of time before we see tragic results in Wisconsin. I want to be assured that if this happens; the matter is thoroughly and impartially investigated. Assembly Bill 409 is a strong step in this direction. Personally I would like the bill to contain a provision for even greater impartiality, by including a citizen-at-large on the review board it creates, but I would also support the bill as it currently reads.

AB 409 helps restore a fading confidence in the law enforcement community, something that will benefit both law enforcement and public. I strongly urge your support for this bill.

Auric Gold

5816 Halley Way, #109

Madison, WI 53718

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December 12, 2013

Committee on Criminal Justice
Representative and Chair, Joel Kleefisch
Room 307 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Re: AB 409

Dear Members of the Criminal Justice Committee:

My name is Joshua R. Henze. I am the son of a career law enforcement officer and executive. I have a Master's degree from UW-Madison with a field of concentration in Police Reform. For a little over 5 years, I worked as a contract research assistant for the Center for Problem-Oriented Policing, Inc. - a federally-funded law enforcement consulting company run by former Police Chief and UW-Madison Law Professor Michael Scott.

From October of 2012 to May of 2013 I worked as a contract researcher for Michael Bell and from March to May of 2013 I worked as an unpaid intern for Rep. Bies. I conducted research on law enforcement oversight agencies outside of the state of Wisconsin.

Utilizing the National Association of Civilian Oversight of Law Enforcement listing of over 120 oversight agencies around the U.S., we chose 6 locations: Boise, Idaho; Chandler, Arizona; Cincinnati, Ohio; Eugene, Oregon; Las Vegas/Clark County, Nevada; and San Diego, California.

I have 5 statements and 2 conclusions to briefly present to this hearing about my research of these 6 oversight agencies in regard to the proposed officer-involved death review board in AB409:

1. These oversight agencies were created through public demand for more law enforcement accountability, in some cases combined with federal influence or intervention. Events which triggered change consisted of high-profile officer-involved deaths or severe misconduct or abuse of power.
2. They were tailored to fit the needs of law enforcement and the community. As a result, these oversight agencies take many forms: independent adjudicative-type positions such as an auditor, ombudsman or directors, connected with independent non-sworn investigators and/or citizen-only review boards or a hybrid police-citizen review board.

3. Citizen review board members are appointed civilian volunteers. Some have a law or law enforcement background. Some have none whatsoever. The training they receive varies.

4. These boards review, rule on, and submit findings and recommendations to law enforcement executives, and in one case, also the city manager; regarding three areas of police internal policy investigations: officer-involved deaths, complaints, and misconduct.

5. However, in correspondence with current Eugene, Oregon Police Auditor Mark Gissner, former director of the City of Cincinnati's Office of Municipal Investigations, he stated the following:

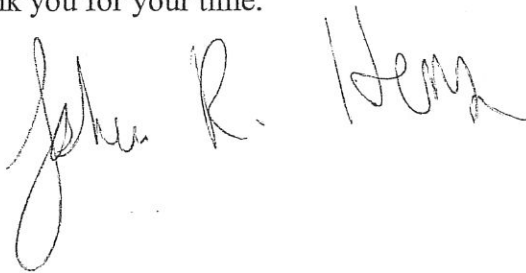
"Most review boards fail because of their decision to take on far more than the capacity to do the competent work necessary to be credible."

In conclusion, I believe that AB 409's proposed review board addresses two of the greatest weaknesses of law enforcement oversight agencies' review boards that I researched around the U.S.:

1. This proposed board would only review officer-involved deaths from the criminal investigation, not policy investigations regarding officer-involved deaths, complaints, and misconduct.

2. This board would be made up of only experienced criminal justice professionals, and would therefore not contain citizens without prior experience.

Thank you for your time.

A handwritten signature in black ink, appearing to read "John R. Henry". The signature is written in a cursive, flowing style with a large initial "J" and "H".

Russell R. Beckman
4311 Durand Avenue, #209
Racine, WI 53405
(262)945-1249
Rbeckman62@yahoo.com

December 12, 2013

Committee on Criminal Justice
Representative and Chair, Joel Kleefisch
Room 307 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Re: AB 409

Dear Members of the Committee

I am a retired City of Kenosha police detective with over 31 years of law enforcement experience. During my career with the Kenosha Police Department, I earned 57 awards and letters of commendation and completed the Wisconsin Department of Justice Death Investigation School, along with numerous other police related training programs. For nine years, I served on the Board of Directors of the Kenosha Professional Police Association, most of those years as the Association treasurer. I was also an active member of the Wisconsin Professional Police Association for nearly three decades.

I graduated from UW-Parkside with Summa Cum Laude honors and a triple major of sociology, history, and political science. I hold five secondary teaching licenses with the Wisconsin Department of Public Instruction. I earned these licenses through the post-baccalaureate teacher certification program at UW-Milwaukee. I currently work as a full time social studies teacher at an alternative high school in Milwaukee for at-risk youth. In my spare time, I volunteer as an investigative consultant for the Chicago Innocence Project, where I work with college journalism students who intern with the project.

This letter, the attached affidavit with supporting documents, and my testimony will make many people uncomfortable. My testimony will address the elephant in this hearing room. We all know it is here. Most of us, including me, do not want to acknowledge it. I will be testifying about a law enforcement culture in some police agencies that fosters an environment where the concealment of facts and evidence, untruthfulness, and other unethical and criminal behavior by police officers is both tolerated, and in many cases, expected.

Only the most naïve among use will deny the evidence of the existence of police and prosecutor misconduct in their investigation duties.

On May 20, 2012, the National Registry of Wrongful Convictions issued a report titled, *Wrongful Convictions in the United States, 1989–2012*.¹ This report, which received extensive media coverage upon its release, documented 873 individual exonerations² in the United States from January, 1989 through the end of February, 2012. As of December 10, 2013, the number of individual exonerations is up to 1,255.³ Of these 1,255 individual felony exonerations, thirty-one are Wisconsin cases. Of these thirty-one Wisconsin exonerations, “official misconduct” is listed as a contributing factor in six of these cases.⁴ To put this in perspective, since 1989, it is confirmed that six Wisconsin citizens were deprived of their fundamental constitutional right of liberty by the misconduct of Wisconsin government officials. Taking a citizen’s liberty by official misconduct is just a notch below taking a citizen’s life.

The 2012 report also documents 1107 additional exonerations that occurred in groups due to thirteen police scandals where it was determined that law enforcement officers engaged in patterns of misconduct that affected the integrity of sets of criminal convictions.

Researchers concluded that the numbers of known individual and group exonerations is only a fraction of the total number of wrongful convictions that actually occur in the United States.

The report also lists the contributing causes for the wrongful convictions in the 873 cases of individual exonerations across categories of felonies. This data is contained in the table that follows that has been copied and pasted from page #40 of the 103-page report. The table shows that official misconduct, which includes perjury and failure to disclose exculpatory information or evidence by government agents, and perjury and false accusation, on the part of civilians, are the leading causes of the wrongful convictions in the set of 873 individual exonerations the report studies.

¹ This report can be found at http://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf

² These individual exonerations are for all felony convictions, not only homicide convictions.

³ Retrieved from <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx> on December 10, 2013.

⁴ Retrieved from <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=State&FilterValue1=Wisconsin> on December 10, 2013.

Table 13: Exonerations by Crime and Contributing Factors

	Mistaken Witness Identification	Perjury or False Accusation	False Confession	False or Misleading Forensic Evidence	Official Misconduct
Homicide (416)	27%	<u>64%</u>	25%	23%	<u>56%</u>
Sexual Assault (203)	<u>80%</u>	23%	8%	<u>37%</u>	18%
Child Sex Abuse (102)	26%	<u>74%</u>	7%	21%	<u>35%</u>
Robbery (47)	<u>81%</u>	17%	2%	6%	26%
Other Violent Crimes (47)	<u>51%</u>	<u>43%</u>	15%	17%	<u>40%</u>
Non-Violent Crimes (58)	19%	<u>52%</u>	3%	3%	<u>55%</u>
ALL CASES (873)	<u>43%</u>	<u>51%</u>	15%	24%	<u>42%</u>

The Innocence Project is a New York based national “umbrella” innocence project. According to its web page, it is a “. . . national litigation and public policy organization dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system to prevent future injustice.”⁵

The Innocence Project defines and illustrates “government [official] misconduct” as follows:⁶

Common forms of misconduct by law enforcement officials include:

- Employing suggestion when conducting identification procedures
- Coercing false confessions
- Lying or intentionally misleading jurors about their observations
- Failing to turn over exculpatory evidence to prosecutors
- Providing incentives to secure unreliable evidence from informants

Common forms of misconduct by prosecutors include:

- Withholding exculpatory evidence from defense
- Deliberately mishandling, mistreating or destroying evidence
- Allowing witnesses they know or should know are not truthful to testify
- Pressuring defense witnesses not to testify
- Relying on fraudulent forensic experts
- Making misleading arguments that overstate the probative value of testimony

⁵ Retrieved from <http://www.innocenceproject.org/> on December 10, 2013.

⁶ Retrieved from <http://www.innocenceproject.org/understand/Government-Misconduct.php> on December 10, 2013.

One may ask, "What does data regarding official misconduct in wrongful conviction cases have to do with AB-409, which is the subject of this hearing?" The link is clear. Some police officers and prosecutors commit perjury, conceal evidence and other critical information, and disregard basic rules of conflict of interest to deprive innocent citizens of their liberty by incarcerating them by wrongful conviction.

It is not a stretch to think they would engage in this type of misconduct to protect their co-workers from being held accountable for unlawful use of deadly force. It is the mirror image of wrongful conviction. This type of official misconduct is intended to shield a co-worker from being held accountable for unlawful use of deadly force, thus depriving a citizen of another fundamental constitutional right, the right to their life.

In the fall of 2012, Investigative Consultant Ira Robins asked me to provide an affidavit related to evidence that I possessed related to criminal misconduct by many high ranking City of Kenosha Police officials, including the Chief of Police. Mr. Robins submitted this affidavit, along with other information that he developed, to the United States Attorney for the Eastern District of Wisconsin. Mr. Robins asked for a federal investigation into a pattern and practice of criminal civil rights violations on the part of the Kenosha Police Department. Arguably, the most egregious of these civil rights violations was the death of Michael Bell at the hands of the Kenosha Police in November of 2004. Based on information that I have obtained, I believe the federal government is conducting this investigation. We will, of course, have to wait and see if indictments are issued.

My affidavit documented and provided evidence of numerous cases of concealment of evidence, altering of evidence, perjury, and other criminal acts by high ranking Kenosha Police officials, in addition to the numerous illicit acts involving the Kenosha Police investigation into the death of Michael Bell. Some, but not all, of this information is already available in documents that I filed with the City of Kenosha Police and Fire Commission, the Kenosha County District Attorney, and the Wisconsin Department of Justice. None of these agencies acted on this information. Their indolence ultimately forced the unresolved issues to be submitted to the federal government so they could step in and protect the interests and constitutional rights of Wisconsin citizens. Currently, the affidavit that I provided to the United States Department of Justice is not a public record because, as far as I know, they are investigating these crimes.

Investigative Consultant Ira Robins also asked me to review the thousands of pages of documents, still photos, and videos that the City of Kenosha turned over to Michael Bell's attorneys in his federal civil suit over the death of his son. After my review of these materials, I have concluded that the shooting of Michael Bell was an intentional act that resulted from an

unfortunate, unavoidable, but entirely understandable circumstance. I believe that one of the four officer's holstered handgun got caught in the side mirror of a car during the struggle with Michael Bell. This caused the officer who's handgun was caught in the mirror to honestly believe that Michael was attempting to disarm him. His hysterical cries to the other officers due to his mistaken belief that he was being disarmed resulted in Michael being shot in the head. This officer compounded the tragedy when he committed suicide in October 2010.

The affidavit related to my theory is included in the packet of material that I provided to all of you. I respectfully request and strongly recommend that you take the time to read it.

However, based on the thousands of pages of discovery documents that the City of Kenosha provided Michael Bell's attorneys, the likely scenario that the Officer's holstered gun was caught in the car mirror during the struggle was never considered nor explored as a factor in the death investigation. To this day, unless the Feds are conducting an inquiry, this likely "gun getting caught on the car mirror" theory, has yet to be officially investigated. There are only two possible reasons why the Kenosha Police Department, who were investigating their own officers, failed to traverse this avenue of inquiry.

1. Utter and inexcusable incompetence.
2. Intentional conspiracy to conceal and deceive.

With either reason, AB-409, should it become law, would prevent future instances in which a police department pre-disposed to corruption or incompetence could attempt to investigate their own officers who are involved in the death of a citizen.

My dear sister is a police officer in southeastern Wisconsin. Several years ago she shot an armed attacker in the line of duty. Recently, during one of our discussions about this bill, she told me that any police officer involved in a justifiable shoot would have no fear of and would welcome the review of their actions by the entity established when AB-409 becomes law. If I was not retired from law enforcement and was still an active officer, I would also prefer having the protection of the law to prevent a life sentence in a virtual prison for submitting to the peer pressure and participating in the crime of covering up a questionable or unlawful use of deadly force.

Many critics of this bill claim it adds an unnecessary level of government bureaucracy. I ask you and these critics these questions. Is protecting the natural right of the individual to life and liberty unnecessary? Is having a legal system where individual citizens are protected by due process unnecessary? I proclaim that critics of this bill demonstrate either inexcusable ignorance or a prince-like disregard of our country's founding moment.

Respectfully,
Russell Beckman

**Affidavit of Russell Beckman Regarding the Circumstances Surrounding
the Possession of the Handgun of Officer Erich Strausbaugh during the
Encounter with Michael E. Bell**

Russell R. Beckman, (hereinafter referred to as the "Affiant"), being duly sworn, states as follows:

Introductory Statement:

- 1) The Affiant is providing this affidavit to Investigative Consultant Ira Robins at his request.
- 2) The Affiant is aware that Ira Robins has been retained by the family of Michael E. Bell to review the circumstances surrounding the death of Michael E. Bell on November 9, 2004.
- 3) Furthermore, the Affiant is aware that Mr. Robins intends to submit the findings of his review to the United States Department of Justice and request that it conduct a criminal investigation into the circumstances surrounding Michael E. Bell's death and other instances of what both Mr. Robins and the Affiant believe are a pattern and practice of civil rights abuses by the Kenosha Police Department over many years.
- 4) The Affiant has provided Mr. Robins with a separate affidavit regarding information the Affiant possesses relating to what the Affiant believes is this pattern and practice of civil rights abuses by the Kenosha Police Department and what the Affiant believes is an institutional culture of dishonesty that exists in the highest levels of the Kenosha Police Department.
- 5) Michael M. Bell, the father of Michael E. Bell, has provided Mr. Robins with the complete set of copies of the discovery materials from the civil action that Mr. Bell filed in the United States Federal District Court of the Eastern District of Wisconsin relating to the death of his son. (Civil Action No. 05-C-1176)
- 6) Mr. Robins asked the Affiant to review these materials and provide any insight that the Affiant may have regarding the circumstances and homicide of Michael E. Bell. This affidavit will provide information that the Affiant believes is relevant to the circumstances relating to the homicide of Michael E. Bell.
- 7) Based on the information that will follow in this affidavit, the Affiant believes that Michael E. Bell was not attempting to disarm Officer Strausbaugh just prior to the fatal shot being fired into Bell's head. The Affiant believes that when the struggle between Bell, Officer Strausbaugh, Officer Wiedner, and Lieutenant Krueger moved to the driver's side of the vehicle, Officer Strausbaugh's holstered handgun got caught, or tangled, in the driver's side

mirror of the vehicle. The entanglement of the holstered handgun caused the driver's-side mirror of the car to break off at the base. Furthermore, the entanglement of Strausbaugh's holstered handgun in the driver's-side mirror caused Strausbaugh to sincerely, but incorrectly, believe that Bell was attempting to disarm him. This mistaken belief caused Strausbaugh to impassionedly communicate his belief that Bell was attempting to disarm him to the other officers involved in the struggle. Thus, in response to Strausbaugh's mistaken belief that Bell had his handgun, Officer Gonzales placed his handgun to the right side of Bell's head and pulled the trigger. The gun did not discharge. Officer Gonzales then backed the gun slightly away from Bell's head and pulled the trigger again, shooting one shot into the right side of Bell's head, killing Bell.¹ Prior to the fatal shot being fired none of the other three officers at the scene, Officer Gonzales, Officer Wiedner, and Lieutenant Krueger, indicated in their reports or deposition testimony that they independently verified Strausbaugh's verbal claims that Bell actually had his hand on Strausbaugh's gun as Strausbaugh mistakenly believed.

Affiant's Experience, Training, and Qualifications to Provide Opinion:

- 8) As indicated, the Affiant is Russell R. Beckman. The Affiant's date of birth is January 21, 1962. He currently resides at 4311 Durand Avenue #209, Racine, WI 53405. His phone number is (262) 945-1249 and his e-mail address is rbeckman62@yahoo.com.
- 9) The Affiant has completed a Bachelor of Arts degree with summa cum laude honors from the University of Wisconsin–Parkside with a triple major of Sociology, History, and Political Science.
- 10) The Affiant has also completed the post-baccalaureate teacher certification program at the University of Wisconsin–Milwaukee. He holds Wisconsin Department of Public Instruction teaching licenses in broad field social studies, history, sociology, geography, and political science.
- 11) The Affiant currently serves as a volunteer investigative consultant with the Chicago Innocence Project and the Wisconsin Innocence Project.
- 12) The Affiant was hired as a full-time patrol officer by the Kenosha Police Department in September 1983. On January 1, 1995, the Affiant was promoted to detective. The Affiant retired from the Kenosha Police Department on January 22, 2012.
- 13) During his service as a detective, the Affiant investigated sensitive crimes as well as white collar or financial crimes, completed the Wisconsin Department of Justice Death Investigation School, and conducted death investigations.

¹ In his April 30, 2007 deposition, Lieutenant Krueger testified that he ordered Gonzales to shoot Bell simultaneously with Gonzales firing the fatal shot. (app. CD "D". file name: "Dep_Krue951226". pp. 18 – 19.)

The Affiant also participated in several long-term investigations involving federal law enforcement agencies.

- 14) During the Affiant's tenure with the Kenosha Police Department, he earned 53 awards and letters of commendation and received positive yearly evaluations.²
- 15) The Affiant also served on the Board of Directors of the Kenosha Professional Police Association³ from 1995 to 2004. For most of those years, he was the Treasurer of that organization.

Affiant's Experience in Carrying Handguns:

- 16) Immediately after graduating from high school in June, 1980, the Affiant sought employment as a police officer. The Affiant's first sworn law enforcement position was during the summer of 1980. He was employed part time by the Kenosha County Fair Police as a uniformed officer. In this position, the Affiant carried a .38-caliber handgun in a leather holster on a duty belt. The Affiant worked for this organization during the Kenosha County Fair during the summers of 1980 and 1981.
- 17) In the summer of 1981, the Affiant was employed part time as a uniformed water patrol officer for the Town of Salem Police Department (Kenosha County, Wisconsin). In this position, the Affiant carried a .38-caliber handgun in a leather holster on a duty belt.
- 18) In the summer of 1982, the Affiant was employed full time as a uniformed patrol officer at the University of Wisconsin-Milwaukee. In this position, the Affiant carried a .38-caliber handgun in a leather holster on a duty belt.
- 19) As indicated, in September 1983, the Affiant was employed full time as a uniformed patrol officer with the City of Kenosha Police officer. The Affiant carried the handgun issued to him by the Department.
- 20) When the Affiant was first hired by the Kenosha Police department as a patrol officer in 1983, the issued handgun was a .38-caliber revolver. The Affiant carried this issued handgun in a leather holster on his duty belt.
- 21) Beginning in the summer of 1985 to the spring of 1988, the Affiant was also employed part time as a uniformed patrol officer by both Village of Pleasant Prairie and Village of Twin Lakes. (Both of these villages are in Kenosha County, Wisconsin.) In these positions the Affiant carried a .357-caliber handgun in a leather holster on a duty belt.

² Copies of these awards and commendations are available upon request.

³ The Kenosha Professional Police Association is the recognized collective bargaining unit that represents patrol officers, court officers, and detectives of the Kenosha Police Department.

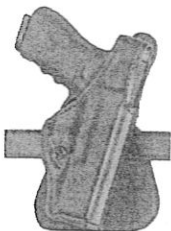
- 22) In the early 1990s, while the Affiant was still employed as a patrol officer with the Kenosha Police Department, the police department transitioned from .38-caliber handguns to the Smith & Wesson model 4506 .45-caliber handgun. At the same time, the police department required that patrol officers carry this handgun in the leather holster specifically issued by the department.⁴
- 23) Sometime after 2008, the Kenosha Police Department transitioned to Glock .40-caliber handguns. In this transition, all officers and detectives had to carry this handgun in the department-issued holster. For detectives, this was a plastic composite holster that was worn on the hip. No detectives were allowed to carry their handgun in a shoulder holster.
- 24) From the summer of 1998 to April 2010, the Affiant worked part time as a security officer at the Cinemark Tinseltown theater complex in Kenosha, WI. During the term of his employment, the Affiant was required to be armed. The Affiant carried a Smith & Wesson model 4588 .45-caliber handgun while working in this position. The model 4588 is very similar in size and weight to the Kenosha Police Department issue Smith & Wesson model 4506 .45-caliber handgun. From the summer of 1998 to the late 2000's, the Affiant carried the model 4588 handgun while working at this facility in a leather "paddle" holster on his side.⁵ In the late 2000's, the Affiant started to carry his handgun in a concealed fanny-pack holster while working at this facility.⁶

⁴ During this time period there were no standard-issued holsters for detectives at the Kenosha Police Department. Detectives were still required to carry the department-issued Smith & Wesson .45-caliber model 4506 handgun. However, they were allowed to purchase and maintain their own holsters. Prior to his promotion to detective, the Affiant carried his department-issued Smith & Wesson .45-caliber model 4506 handgun in the police department-issued leather holster on his duty belt. The Affiant, while he was a detective, carried his model 4506 handgun in a shoulder holster.

⁵ A "paddle" holster is very similar to a standard issued duty holster that is typically worn by uniformed police officers. The primary difference is that a "paddle" holster is attached to a person's side by a contoured flap that is tucked into the wearer's pants. An example of the paddle holster worn by the Affiant can be found at the following web page:

<http://www.safariland.com/DutyGear/product.aspx?pid=518>

A photo of this type of holster is below:



⁶ Examples of this type of holster can be found by doing an internet search. This type of carrying system allows the gun to be securely held in a belt pouch or fanny pack worn around the waist. The gun can be quickly drawn by pulling on a zipper that opens the pack and allows access to the gun.

25) The Affiant has carried a handgun, concealed or unconcealed, as a condition of his employment, on a daily basis while working at the aforementioned jobs.

26) The Affiant retired from the Kenosha Police Department on January 22, 2012.

Affiant's Experience in Equipment Issued by Kenosha Police Department:

27) As previously indicated, prior to the Affiant's promotion from patrol officer to Detective in 1995, the Affiant carried the Smith & Wesson model 4506 .45-caliber handgun while on duty via the department-issued leather holster attached to his duty belt. This is the same model handgun that Officer Strausbaugh was carrying the night of his encounter with Michael E. Bell on November 9, 2004.

28) The Affiant also believes the holster in which Strausbaugh carried his issued Smith & Wesson model 4506 .45-caliber handgun was the same model holster in which the Affiant carried his handgun prior to his promotion in 1995.⁷

29) The aforementioned holster has a "jacket slot" as one of the design elements. A "jacket slot" is a separation between the part of the holster that is mounted

⁷This statement can, and should, be confirmed. Strausbaugh's holster was put into evidence after the November 9, 2004 shooting. It may still be in evidence. (app. p. 27) Also, it is likely that the police department maintains records to confirm this assertion. The Affiant was not able to locate any mention of the specific manufacturer and model number of the holster worn by Strausbaugh on November 9, 2004, in any of the discovery documents that he has reviewed. However, one of the experts hired by the City of Kenosha in the case, Robert Willis, indicates in his report that Strausbaugh was wearing a Level I retention holster during the Bell encounter. (app. CD "D" file name: "166A_Willis_20080115_1097195", p. 28 (exhibit #166a)) Based on the Affiant's memory of the holster he carried prior to his promotion to detective in 1995, the Affiant believes the foregoing photo is a photo of the model holster that was carried by Kenosha Police patrol officers at the time of the Bell shooting. Furthermore, the Affiant has viewed the video reenactment of the Bell shooting (app. CD "D," file name: "VTS_01_1") (Note: This video file is best viewed with "clear.fl") and the squad video of the initial contact between Bell and Strausbaugh on November 9, 2004. (app. CD "D," file name: "Bell enhanced audio"). The Affiant believes the holsters shown in these videos are the same models as the holster carried by the Affiant prior to 1995 and the holster shown below.



"...a Safariland right-hand duty type holster for the Smith & Wesson models 645, and 4506 semi-auto pistols with 5" barrels. Plain black finish suede lined. Level 1 retention holster. 1.50" belt drop. Features a top draw, mid-ride, straight drop cant and a thumb break with a one-way directional snap. Adjustable holster tensioning device easily allows the controlling of friction levels with the turn of a screw." Retrieved from:

<http://www.gunbroker.com/Auction/ViewItem.aspx?Item=315079642> (2012, November 10)

onto the duty belt and the part of the holster that carries the handgun. This space, or "slot," allows the bottom of a jacket to be slid down into the space between the holster and the duty belt. This is a common feature of many holsters designed for unconcealed use by uniformed law enforcement officers. The following photo provides a view of this type of design element:



(Please note that this photo is not of the actual model holster that was used by the Kenosha Police Department. However, it is a very good illustration of a "jacket slot," which is a feature of the holster the Affiant used prior to his promotion from patrol officer to detective in 1995 and the holster worn by Officer Strausbaugh during his November 9, 2004 encounter with Michael Bell.)

30) As seen in the photo, the "jacket slot" design element causes the handgun to be farther away from the wearer's hip than a holster that does not have this feature. This is obviously due to the gap between the gun and the wearer's duty belt, which must be snug against the body.⁸ This gap, and the fact that the gun does not ride snug against the body, allows for the occurrence of the phenomenon that will be described in the next section of this affidavit.

The Phenomenon of Catching One's Holstered Handgun on "Things":

31) This section will address the phenomenon of a police officer's holstered handgun catching on other items within an environment. To citizens who do not routinely carry handguns, this section may be difficult to understand. However, the Affiant believes that nearly every person who works or has worked as a police officer or armed security officer for any significant period of time is familiar with, and has experienced, what will be described in this section.

⁸ The viewer can see glimpses of the gap caused by the jacket slot in Officer Strausbaugh's holster if one closely watches from 02:11:10 to 02:11:26 of the squad car video of Officer Strausbaugh's initial contact with Michael E. Bell on November 9, 2004. (app. CD "D," file name: "Bell enhanced audio" or at <http://michaelbell.info/DashCamVideo.html>). One can also see the gap caused by the "jacket slot" of Officer Strausbaugh's holster in a photo of Officer Strausbaugh that was taken at the police department in his uniform several hours after the November 9, 2004 shooting. (app. p. 28)

- 32) A holstered handgun being worn by a police officer is like many other personal accessories that can “catch” on other things within an environment. Over the course of the Affiant’s law enforcement career, the Affiant’s holstered handgun has been caught or has been struck by door handles, car seat belts, car steering wheels, car side mirrors, chair armrests, tree limbs, curtains, cabinet and desk drawers, shopping carts, cubical walls, fences, loose clothing and jackets that are being worn by other people, and countless other things that one can find within any environment.
- 33) In most instances, the holstered handgun will merely strike the environmental object. In at least one occasion, the Affiant broke the rear sight on his duty handgun when the holstered gun struck an object. The sight needed to be replaced. In other instances, the environmental objects that were struck were damaged.
- 34) In fewer instances, the holstered handgun was actually “captured” and held by the environmental object in which it entangled. When this occurs, it literally stops you in your tracks. This is because the handgun and holster are designed to be securely held by the duty belt. The uniform duty belt is thick and wide. It must be snug against the body. In other words, if an environmental object captures one’s holstered handgun, it literally stops you in your tracks and pins you against the capturing item. The holstered handgun is securely fastened to a thick and durable belt that is snug on the body. Unless the holster breaks or rips, the carrier of the captured handgun is not going to be able to move until the holstered gun is released from the capturing item.
- 35) A historically effective means for a police or security officer to move a person is to grab the person by the back of the belt. If one controls this person in this manner, the person can be moved easily, even with resistance, from one place to another.
- 36) Imagine a carpenter or other tradesperson who may wear a belt that is attached to tools or a “holster” with tools. They are prone to the same phenomenon. A person who carries a cell phone on a belt holder may also experience this phenomenon. A person who wears fashion accessories such as jewelry, watches, or loose fitting clothing may also catch these items on an environmental item. However, in most of these instances, the clothing or accessory item may rip or break before it stops the wearer in their tracks like a caught holstered handgun would stop a police officer. If one spends enough time in an emergency room, one would expect to see partial or full amputations in an unfortunate circumstance when the failure point of a personal accessory worn on an extremity is beyond the failure point of the extremity.
- 37) No one intentionally attempts to have their personal accessories catch on an object in the environment. Thus, when it does occur, it is almost always a surprise to the involved person. The element of surprise is the same for a

police officer whose holstered handgun is caught and captured by an environmental object. However, to a police officer, the phenomenon is especially unnerving since such an event feels nearly identical to an attempt at disarmament. This is understandable since the physics of a forceful and aggressive disarmament attempt can be identical to a holstered handgun being caught and captured by an environmental object.

- 38) Most instances of a police officer catching his holstered handgun on an environmental object occur during times of low risk and low stress. This is understandable since the majority of a police officer's duty time is spent on low-risk and low-stress activities. Thus, the unnerving feeling that a police officer experiences when he catches his holstered handgun on an environmental object is quickly dissipated when one realizes that there is no threat to his safety by the surprise capture of his holstered handgun.
- 39) Should such a phenomenon occur during a time of high risk and high stress, such as an intense physical struggle between an officer or officers and a suspect, the officer may not be able to immediately determine that their holstered handgun is caught on an environmental object. Since even during times of low risk and low stress, the phenomenon feels like a disarmament attempt, it would certainly feel the same during a critical incident. In other words, the confusion, exhaustion, and the fog of the battle may make it impossible for an officer to immediately determine that his holstered handgun has not been captured by the suspect, but rather by a benign object.
- 40) The Affiant believes this is exactly what happened to Officer Strausbaugh during his encounter with Michael Bell on November 9, 2004. The Affiant believes that Officer Strausbaugh's holstered handgun got caught and entangled in the driver's-side mirror of the car where they were struggling. Strausbaugh understandably and honestly believed that Michael Bell was attempting to disarm him. Strausbaugh appropriately, and yet mistakenly, sounded the alarm and communicated to the other officers involved in the struggle that Bell was taking his gun. Another officer then shot Bell in the head to end what Strausbaugh was convinced was an imminent threat to him and his fellow officers. The next section of this affidavit will provide the evidence and facts the Affiant believes support his theory.

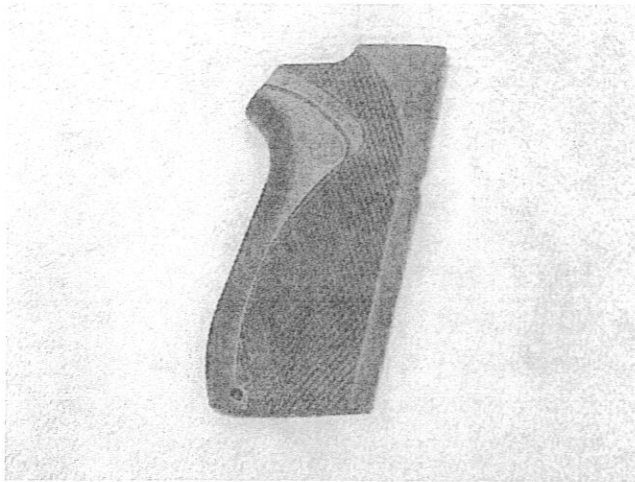
Facts in Support of Theory that Strausbaugh's Handgun got Caught or Entangled on the Car Mirror during the Struggle with Michael Bell:

- 41) Many of the facts relating to the November 9, 2004 encounter between Michael E. Bell and Kenosha Police Officers Strausbaugh, Weidner, Gonzales, and Lieutenant Krueger are in dispute. The focus of this affidavit is very narrow. It will specifically address the Affiant's belief that Officer Strausbaugh experienced the phenomenon of having his holstered handgun caught and captured by an environmental object, specifically the driver's-side mirror of the car where the struggle with Bell had moved. This affidavit will not address the numerous factors or discrepancies that exist in this case.

- 42) There is one fact involving the November 9, 2004 encounter between the officers and Michael Bell that is undisputed by nearly all witnesses, both law enforcement and civilian. That fact is that Strausbaugh loudly called out several times that Bell had his gun. The manner in which Strausbaugh called this out has been described by witnesses as hysterical and terror-filled along with other similar type descriptors. Based on the descriptions of these many witnesses who heard Strausbaugh's calls, it is clear that Strausbaugh was absolutely convinced that Bell had, or was on the verge of controlling or possessing, Strausbaugh's handgun.
- 43) As indicated previously in this affidavit, the Affiant believes that Bell was not trying to disarm Strausbaugh. This belief is confirmed by the absence of Bell's DNA on both Strausbaugh's handgun and holster.
- 44) As also indicated, the Affiant reviewed all of the discovery materials in the Federal court civil case that was filed by the family of Michael E. Bell due to his death. In this review, the Affiant found no mention or discussion of the grip of the department-issued handgun that Officer Strausbaugh was carrying during his encounter with Bell.
- 45) The Smith and Wesson model 4506 was outfitted with black hard plastic grips. These grips had, what is commonly known as, a "diamondback" pattern. This raised-and-pointed pattern is molded into the grip. It is designed to allow for the handler of the handgun to obtain a firm grip and minimize the chances of the gun slipping out of the hand. Common sense dictates that a handgun with a slippery grip would not be desirable and could potentially be very dangerous. The "diamondback" pattern creates a surface that is abrasive to the skin due to the high coefficient of friction with human skin. When a person touches a diamondback grip, the surface would feel rough. If a person would rub the diamondback surface of a grip repeatedly on human skin, it would, in short order, cause a break or abrasion in the skin. The photo that follows is of a grip for a Smith and Wesson Model 4506 handgun that has a diamondback finish.⁹

⁹ Copied and pasted from:

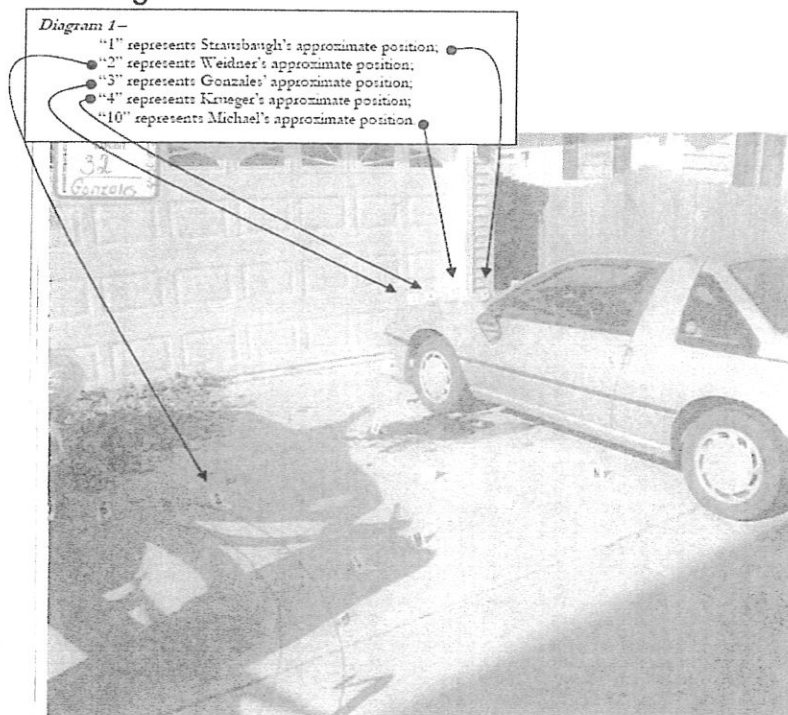
http://www.google.com/imgres?imgurl=http://picturearchive.gunauction.com/5769112521/7966468/43b5804ff5bcec9a80c376be12bbd3a4.jpg&imgrefurl=http://www.gunauction.com/buy/7966468/grips/factory-grips-smith-wesson-model-4506-1006-s-and-w&h=351&w=469&sz=31&tbnid=vYhvfx2go4tt3M:&tbnh=97&tbnw=130&zoom=1&usq=IQhSoid-otAwYvPeZel_FOIOB_Y=&docid=T3SbyUIJhhQRoM&itg=1&hl=en&sa=X&ei=hlqiUJPwK4Od2QXd24GgBw&ved=0CDoQ9QEwBA&dur=43 on November 13, 2012.



- 46) A "diamondback" grip on the handgun carried by Officer Strausbaugh has a surface that is highly conducive for the transfer of DNA from any person who handles the grip. Thus, the finding that the handgun did not have any DNA from Michael Bell is very significant and allows one to conclude, to a high degree of certainty, that Bell did not touch Officer Strausbaugh's handgun. It should be noted that Officer Strausbaugh's DNA was on the grip and holster of the handgun. (app. p. 29)
- 47) The aforementioned facts support the Affiant's theory that Michael Bell was not attempting to disarm Strausbaugh. It also supports the contention that some other action or mechanism caused Strausbaugh to cry out hysterically that Michael Bell had his gun.
- 48) In Strausbaugh's initial and subsequent statements after the shooting, he indicates that Bell had a grip on his gun and Bell pulled the holstered gun with such force the holster and gun moved from its normal position on his right hip along the duty belt to the front of his body. (app. pp. 39-40)
- 49) As previously indicated, the holstered handgun is always mounted on the duty belt, which is worn tightly around an officer's waist. To wear the belt loosely would be both unsafe and burdensome since the items mounted on the belt would not stay in position. In addition to a handgun, these items typically include, but are not limited to, one or more sets of handcuffs, a taser, ammunition pouches, pepper spray, a baton, and a flashlight. These items weigh several pounds; if the duty belt were not worn tightly around the waist, an officer would soon find that these items would soon be falling down, taking the uniform pants with them.
- 50) Thus, it would take a significant amount of strength and a firm grip on the holstered handgun to be able to pull the gun along the duty belt from Officer Strausbaugh's right hip to the front of his body. (This is a counter-clockwise movement of the holstered gun along Strausbaugh's duty belt.) The lack of Bell's DNA on the grip of the handgun rules out the possibility that Bell had a firm grip on Strausbaugh's handgun. Furthermore, since Bell was being held

in a "bear hug" by Lieutenant Krueger at the time that Bell was purported to be performing his attempt to disarm Strausbaugh, (app. p. 42) it is unlikely that Bell would have had the strength, without the benefit of using the muscle groups above the elbow, to accomplish the feat of moving the holstered handgun along Strausbaugh's duty belt counter-clockwise from Strausbaugh's right hip to the front of Strausbaugh's body.

- 51) The following photo depicts the scene of the fatal encounter between Michael E. Bell and Officers Strausbaugh, Weidner, Gonzales, and Lieutenant Krueger. It was taken during the morning of November 9, 2004, within hours of the shooting.¹⁰



- 52) This photo also shows the broken driver's-side mirror on the car. During the struggle, the mirror was broken off at the base and was left dangling from the car by the control cables. In the discovery materials, there are no close-up photos, neither scaled nor un-scaled, of the broken mirror. Furthermore, there is neither any mention of the broken mirror in any of the reports generated by Officer Todd Thorne, who processed the crime scene, nor any close-up photos of either the mirror or Officer Strausbaugh's holster.

¹⁰ Copied and pasted from:

Dunphy, Patrick O. *Plaintiffs' Brief in Support of Plaintiffs' Motion for Default Judgment or to Strike Defendants' Affirmative Defenses for the Defendants' Fraud Against the Court*. United States District Court, Eastern District of Wisconsin. Estate of Michael Edward Bell, et. al. vs. Officer Erich Strausbaugh, et. al. Civil Action No. 05-C-1176. p. 6. (9, November 2007)

- 53) The above photo shows that Strausbaugh was positioned very near to the broken driver's-side mirror of the car. The initial statements and subsequent depositions of both Officer Strausbaugh and Lieutenant Krueger indicate that Michael Bell grabbed Strausbaugh and pushed him backward into the driver's door of the car.¹¹ Since Strausbaugh was "bull-rushed"¹² backward and struck the car with his back, his holstered handgun, which was being carried on his right hip, would have been very near, and may have possibly impacted, the driver's-side mirror, which is also to the right, or directly at Strausbaugh's right side.
- 54) It should be noted that none of the four officers at the scene when Bell was shot indicated that any of them struck or made contact with the driver's-side mirror of the car during the struggle. All of their reports are devoid of any mention of the mirror, or how it got damaged in the struggle.
- 55) On December 12, 2007, the police department filmed a video reenactment of the shooting. This video reenactment shows Officer Strausbaugh being "bull-rushed"¹³ backward by the stand-in for Michael Bell. The stand-in for Michael Bell is then grabbed from behind by Lieutenant Krueger and placed in a "bear hug" by Krueger. Krueger then pulls the Bell stand-in toward the front of the car and away from Strausbaugh. The direction Bell's stand-in is pulled is toward Strausbaugh's right. When Krueger pulled the Bell stand-in away from Krueger, Strausbaugh's body turned counter-clockwise in the same direction as the Bell stand-in. It is at this point that Strausbaugh yells that Bell has his gun. The situation then concludes with Officer Gonzales firing one fatal shot to the right side of Bell's head.¹⁴
- 56) The following photos are still images from the December 12, 2007 video reenactment. In the photos that follow, which are in chronological order, please note the position of Strausbaugh's holstered handgun relative to the

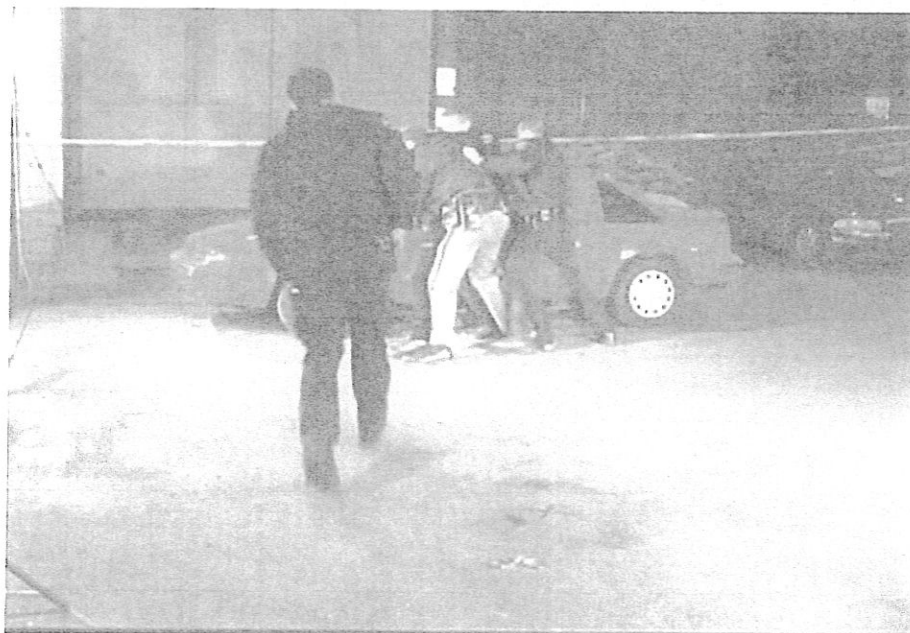
¹¹ Copies of Officer Strausbaugh's and Lieutenant Krueger's initial statements are included with this affidavit as app. pp. 37–40 and 41–43, respectively. The depositions are not included with this affidavit. However, they have been provided by Investigative Consultant Ira Robins with this filing.

¹² Expert witness Robert Willis used the term "bull-rushed" to describe the manner in which Bell pushed Strausbaugh backward into the car. (A copy of his use of the term can be found in paragraph #62 of this affidavit.) Willis cites a number of sources from where he obtained this information. The Affiant checked these sources and found the term "bull-rushed" was used by Captain Randall Berner in his November 11, 2004 report (app. p. 45) and on page #2 of the November 11, 2004 report of Lieutenant Thomas Vieth. (app. CD "D". file name "Dep_Viet981936". p. 74.)

¹³ Ibid.

¹⁴ The video reenactment is included on CD "D" of this submission. (file name: "VTS_01_1".) (Note: This video file is best viewed with "clear.fi") The video can also be found at the following web site: <http://michaelbell.info/Reenactments.html>. The video reenactment actually shows the driver's side mirror being bent at the hinge at the base toward the front of the vehicle due the contact with the area of Officer Strausbaugh's right hip.

driver's-side mirror of the car. In the series of photos, you can also see the counter-clockwise rotation of Strausbaugh's body toward the hood of the car. Very near the center of the pivotal rotation of Strausbaugh's body is his holstered handgun, which is rotating and turning directly upon the driver's side mirror of the car. (The exhibit numbers from the Bell federal civil suit identify each photo.)



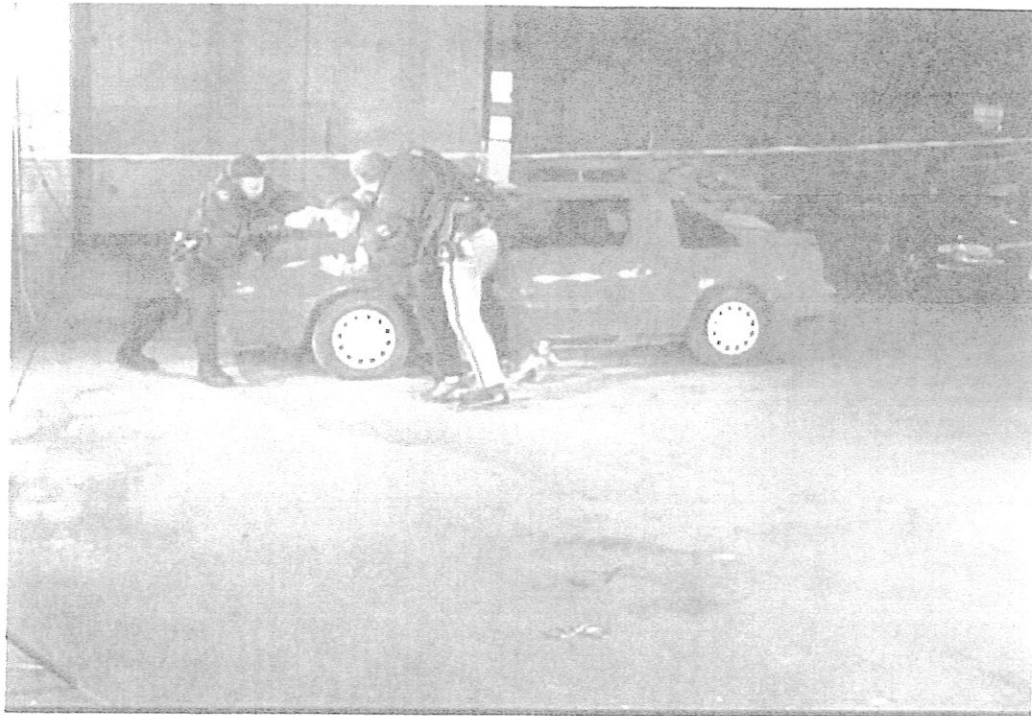


EXHIBIT
1162



EXHIBIT
1163

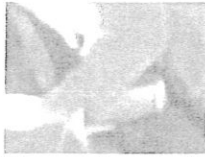
57) Based on the information previously presented in this affidavit, the Affiant believes that Strausbaugh's holstered handgun got caught and captured by the mirror in one of two ways:

- a) The mirror became sandwiched in the jacket slot of the holster. If this scenario occurred, then the counter-clockwise rotation of Strausbaugh's body may have caused the bottom portion of the butt, or grip, of the holstered handgun to get caught on the driver's-side pillar that rises to the roof between the windshield and the driver's door window from the base of the mirror. With the holstered handgun being caught by the mirror in the jacket slot and rising pillar by the bottom of the gun butt, or grip, Strausbaugh's counter-clockwise body rotation would both pull the holstered handgun along the front of Strausbaugh's duty belt from the original position on his right hip and cause the mirror to break off at the base. As indicated, the sensation experienced by Strausbaugh in this scenario would be exactly like the sensation of a disarmament attempt.
- b) The butt or grip of the holstered handgun being caught in the space between the "proximal"¹⁵ side of the mirror and the driver's-side pillar that rises to the roof between the windshield and the driver's door window from the base of the mirror. If the butt or grip of the gun got caught in this manner when Strausbaugh rotated his body counter-clockwise, the rotation would both pull the holstered handgun along the front of Strausbaugh's duty belt from the original position on his right hip and cause the mirror to break off at the base. As indicated, the sensation experienced by Strausbaugh in this scenario would be exactly like the sensation of a disarmament attempt.

58) The following photo is a copy from the first set of four photos beginning on page #13 of this affidavit. (exhibit #200) It is a zoomed-in view of the portion of the photo of Strausbaugh's holstered handgun in relation to the car mirror in the video December 12, 2007 reenactment.¹⁶ Although this photo is not exceptionally clear, one can see the space between the proximal side of the mirror and the rising pillar between the windshield and the driver's-side window in relationship to the position of the butt, or grip, of Strausbaugh's holstered handgun.

¹⁵ "Proximal" is typically a medical term. It is defined as follows: "*situated next to or near the point of attachment or origin or a central point <the proximal was...better than the peripheral stump for a graft—Annual Review of Medicine>; especially : located toward the center of the body <the proximal end of a bone>—compare distal.*" Retrieved from: <http://www.merriam-webster.com/dictionary/proximal> on November 15, 2012.

¹⁶ The video reenactment is included on CD "D" of this submission. (file name: "VTS_01_1".) (Note: This video file is best viewed with "clear.fi") The video can also be found at the following web site: <http://michaelbell.info/Reenactments.html>.



- 59) Regardless of which of the two aforementioned scenarios may have occurred, the counterclockwise twisting of Strausbaugh's body would cause several things to happen:
- a) First, the leverage of the twisting-and-caught holstered handgun would snap the mirror off at the base, leaving it attached to the car by only the control cable.
 - b) Second, the caught-and-captured holstered handgun would be pulled from its original position on the right hip of the duty belt of Officer Strausbaugh in a counter-clockwise direction along the duty belt and toward the front of Officer Strausbaugh's body.
 - c) Third, the caught-and-captured holstered handgun would literally pin Strausbaugh to the side of the car. He would feel the pulling of his caught-and-captured holstered handgun as he moved his body. He would feel the caught-and-captured holstered handgun slowly slide along his duty belt from his right hip to the front of his body. It would feel exactly like someone, specifically Michael Bell, was attempting to disarm him. Even to the most experienced and competent officer, such a feeling in the heat of a prolonged physical altercation would be terrifying. Since the capture of his holstered handgun was completely unanticipated, Strausbaugh made the very reasonable assumption that Bell was attempting to disarm him. Thus, Strausbaugh did what was reasonable and called out for help.
 - d) Fourth, the fatal shot was fired into the head of Michael Bell to end what all of the officers mistakenly believed was imminent threat of death or great bodily harm due to what was perceived by Strausbaugh as Bell's attempt to disarm him.
 - e) Fifth, it would not be until after the fatal shot was fired that Officer Strausbaugh, and possibly others at the scene, would determine that Officer Strausbaugh's holstered handgun was actually caught in the mirror. In order for Strausbaugh to step away from the car, he would need to untangle or release his captured holstered handgun from the car mirror.
- 60) This scenario should have been explored as a possibility, if not the focus, of the investigation into the homicide. A skilled investigator would certainly consider the possibility of the holstered handgun being caught in the mirror. The Affiant believes the omission of its consideration is indicative of deception or concealment of the truth.
- 61) As indicated, there are no close-up photographs of the car mirror in the record. Furthermore, the only place in the reports of the Kenosha Police officials that addresses the broken mirror is in the November 11, 2004 report

of Captain Randall Berner where he indicates that Strausbaugh was "bull rushed" into the car "near the area of the driver's door mirror." (app. p. 45.)

- 62) One of the experts hired by the city to assist in the defense against the federal civil suit filed by Bell's family wrote the following about the mirror in his report: (copied and pasted from app. CD "D". file name: "166A_Willis_20080115_1097195" pp. 21-22.)

Once on his feet, Bell grabbed Strausbaugh around the mid-section³⁷ and then "bull rushed" Strausbaugh and slammed him into a vehicle located in the Bell driveway, a bronze colored Nissan, Wisconsin Registration 888-EYW³⁸, and pinned him against this vehicle in the area of the front driver's window and door. This initial impact broke the front driver's side view mirror off its foundation. Weidner and Krueger immediately came to the aid of Officer Strausbaugh. The Bell family was encroaching on the scene, so Officer Weidner was forced to divert his attention to them and separated from the confrontation with Bell. Strausbaugh reports that Bell was grabbing his holster and handgun³⁹ pulling and twisting it and his gun belt "twisted on his body". Reportedly, even though belt keepers were affixed to his duty belt, his holster and gun were pulled so hard by Bell that the gun ended up in front of him⁴⁰. Strausbaugh reports that Bell had his hand (Bell's hand) on his gun that was still within the holster⁴¹. Strausbaugh reports that as he tried to regain control of his gun, he felt that the safety strap of the holster was undone. He says he had his hand on the rear sight of the gun to attempt to

- 63) The expert is Robert Willis. Mr. Willis has an impressive resume and a tremendous amount of experience. He is a court-approved expert witness on police tactics. The fact that Mr. Willis addressed the broken mirror in his report indicates that he was aware of it. However, for Willis to not address the possibility that Strausbaugh's holstered handgun was caught in the mirror is notable. The Affiant believes it is likely that Willis was, and is, aware that Strausbaugh's holstered handgun was caught in the mirror. If he knew and did not address it in his report, his actions may be unethical and possibly even illegal.

- 64) An investigation into such a serious incident that is intentionally non-comprehensive is flawed. It is also willful misconduct if the goal of the investigation is to conceal the truth. The Kenosha Police Department cleared the officers involved in this homicide in two days. A thorough investigation into a case of this magnitude cannot, in good faith, be thoroughly completed and concluded in two days. In order to protect the civil rights of the Bell family and other citizens who may also be adversely harmed by the actions of the

Kenosha Police, an objective and comprehensive investigation into this, and any other case of this type, is required.

- 65) It is important to note that the actual car against which the struggle between Michael Bell and the officers occurred is still parked in the same spot. Since the night of the shooting, the car has not been moved. It has remained in the driveway of Michael's mother's residence at 8310 14th Avenue, Kenosha, WI.
- 66) In September 2012, the Affiant examined the car. The tires are now flat and the broken driver's-side mirror still hangs by the control cable.
- 67) If Officer Straubaugh's holster is still in evidence at the Kenosha Police Department, which it still should be, then it might be possible to test it for trace evidence that may have been transferred to the holster from the car mirror. It may also be possible to conduct a microscopic examination of the car mirror to determine the manner and direction in which it was bent before it broke from the base.
- 68) Of course, none of this will be done by the Kenosha Police Department. It will not be done by the Wisconsin Department of Justice. It will only be done by the United States Department of Justice if it authorizes the first legitimate criminal investigation into the homicide of Michael Bell.

The Powerful Influence of Peer Pressure in Law Enforcement Culture:

- 69) As indicated, the Affiant believes if his theory regarding the capture of Officer Strausbaugh's handgun by the driver's-side mirror during the encounter with Michael Bell is correct, a relatively small group of Kenosha Police Department personnel, and possibly City of Kenosha officials, are aware of it. These individuals have participated, and are still participating in, the conspiracy to conceal the actual circumstances of the Bell homicide from legally required disclosure.
- 70) People outside of law enforcement may wonder how such a conspiracy of silence and deception could be initiated and maintained. Based on the Affiant's lifetime of experience in the profession, the Affiant believes that such concealment is both possible and even predictable, due to the culture of dishonesty that he believes exists at the Kenosha Police Department. (The Affiant has extensively documented this pattern and practice of deception on the part of police officials in a separate affidavit that is also included in this filing.)
- 71) There have been numerous academic studies that have confirmed the existence of a "code of silence" or a "blue wall of silence" in which police officers will either lie about, or fail to disclose, the misconduct of their co-workers. The Affiant will not review this literature in this affidavit.
- 72) Furthermore, there are numerous contemporary examples of this type of behavior occurring. Two of the most recent well known cases in southeastern

Wisconsin are the Frank Jude beating case by Milwaukee police officers and the more recent case involving accusations that Milwaukee police officers had conducted illegal strip searches and sexual assaults of citizens.

73) On October 9, 2012, Milwaukee Chief of Police Edward Flynn made the following comments related to the charges being issued against four Milwaukee police officers who have been criminally charged in the illegal strip search investigation.¹⁷ The following excerpt of the comments by Chief Flynn addresses the concept of the police "code of silence" in the strip search incidences:

a) *"Quite frankly, I'm disgusted by the willful actions by some of the officers in our police department, and I'm appalled by the willful inaction of some other officers in our police department in failing to stop the egregious conduct. It's a disappointing day for me, it's a disappointing day for this city who we are all sworn to protect,"*

74) It is peer pressure that keeps officers in line and restrains these officers from breaking the code of silence and disclosing truthful information relating to embarrassing or illegal conduct that is being concealed from the public by police officials.

75) In many police departments, including the Kenosha Police Department, officers who violate the norms of the institutional culture and break the code of silence are sanctioned, both formally and informally, by ostracism, isolation, and retaliation in many possible forms. One of the many means of retaliation is extreme scrutiny of the disclosing officer's work by unwarranted and unjustified internal investigations into work performance while the more severe transgressions of the disclosing officer's norm-conforming peers are ignored.

76) In police departments like the Kenosha Police Department, officers are well aware of these potential sanctions. Few officers are willing, or have the courage, to endanger their careers by questioning or exposing misconduct—even the willful misconduct—of their fellow officers. To do so is, in most cases, a path towards a hostile work environment or ultimate separation from employment, either by being compelled to quit due to an intolerable working conditions or due to unjust termination by unethical police administrators who are backed by unquestioning and politically motivated police and fire commissioners.

77) As a case study of the power of peer pressure that exists within the Kenosha Police Department, the Affiant offers the following account of an actual situation that developed in 2009 and concluded in December of 2011:

¹⁷ The Milwaukee Police Department video of Chief Flynn's October 9, 2012 comments that was posted by the Milwaukee Police Department can be found at: <http://www.youtube.com/watch?v=27-FclzKlbM>

- a) The other affidavit drafted by the Affiant that is part of this filing has information related to a grievance filed by the Affiant in the summer of 2009 relating to the procurement of a very desirable position by the then President of the Kenosha Professional Police Association, David Niccolai. (paragraphs #101–124 of the other affidavit.)
- b) In the aforementioned matter, nine members of the Board of Directors of the Kenosha Professional Police Association individually and blatantly lied about the willful mishandling of the grievance to the association members at a general membership meeting on November 3, 2009.
- c) The Affiant was stunned as, one by one, each of these nine board members individually confirmed the lie at this meeting.¹⁸ Prior to the meeting, the Affiant considered some of these board members who lied to be his friends. At least one member was his former patrol partner. But every one of them knew that violating the group norm and telling the truth would result in sanctions being imposed, including possible banishment from the group.¹⁹
- d) The Affiant's pursuit of this grievance by confronting the lies of the nine board members resulted in him being sanctioned by the group. The Affiant's decision to violate the cultural norm and file the Prohibited Practices Complaint with the Wisconsin Employment Relations Commission set in motion a course of events and actions that ultimately resulted in the Affiant's retirement from the Kenosha Police Department.
- e) The final formal sanction of the Affiant by the Board of Directors of the Kenosha Professional Police Association occurred on December 19, 2011. At a board meeting, the Board of Directors voted to deny awarding the Affiant a retirement badge upon his retirement from the police department. (app p. 50.)
- f) The awarding of a badge upon retirement is a tradition of the Kenosha Professional Police Association that goes back to its founding in 1934. The Affiant has reviewed all of the meeting minutes of the Board of

¹⁸ This matter is extensively addressed in the Affiant's other affidavit that is part of this filing. However, the information in that affidavit is only a summary. The matter was very complex and extensively documented in the prohibited practices complaint the Affiant filed with the Wisconsin Employment Relations Commission regarding this matter. The Affiant will provide all supporting documents and recordings related to this matter upon request.

¹⁹ It should be noted that the following board members who lied at this meeting were also involved in aspects of the investigation of the homicide of Michael E. Bell: Officer Todd Thorne, Detective David Niccolai, Detective Matt Strelow, and Detective John Petersen. In addition, the following two board members who lied at this meeting have been listed in the Affiant's other affidavit and the affidavit of Attorney Denise Hertz-McGrath that are included with this filing as being engaged in other instances of misconduct that does not involve the homicide of Michael Bell: Detective John Petersen and Detective Matt Strelow.

Directors from the Association's inception in 1934 and found no other instance where a member was denied a retirement badge.²⁰ The fact that this decision was published in the meeting minutes, which are distributed to all Association members, only enforces the message that one does not violate the cultural norms of the group without being sanctioned.²¹

78) The Affiant believes that not all of the officers and officials involved in the concealment of facts and perjury in the Bell homicide are comfortable with their decision to participate in the fraud. Their initial decision to participate was likely due to the extreme peer pressure that they faced at the time they provided their first untrue statements about the case. Today, should any of them come clean and provide truthful accounts, they will likely face criminal sanctions in addition to the formal and informal institutional sanctions. They will lose their careers and many of their long-time friends from the department. To many police officers, the loss of their status as police officers and membership in the law enforcement subculture is unacceptable. Thus, the decision to conform to the norms is better than the alternative of banishment or some similar sanction. However, for many officers, being and staying on the wrong side of an ethical or moral decision because of peer pressure is still a major cause of stress.

79) There are many academic studies that conclude that the suicide rate of both active and retired police officers exceeds the rate of the general public. There are also some academic studies that attempt to debunk that conclusion. The examination of the literature is beyond the scope of this affidavit. However, it is clear that the stress of being involved in the Michael Bell homicide may have contributed to the suicide of Officer Erich Strausbaugh.

80) Officer Strausbaugh committed suicide on October 31, 2010, after attending a Halloween party with other Kenosha Police officers. Since Officer Strausbaugh is deceased, it will never be possible to interview him or find out,

²⁰ The Kenosha Professional Police Association has all meeting minutes from its inception in 1934 to date. There is a gap in the documents from the mid-to-late 1970's when no written minutes were made. During that era, the meetings were recorded on cassette tapes. The Affiant reviewed all of these pre-1970's documents in 1993 when he completed an independent study project as part of the work on his history major at the University of Wisconsin – Parkside. Since the Affiant was hired by the Kenosha Police Department and became a member of the Kenosha Professional Police Association in 1983, he is aware of the institutional history of the organization. Based on this knowledge, the Affiant also believes that no retiring member was denied a retirement badge during the mid-to-late 1970's when there is a gap of the meeting minutes.

²¹ The Affiant is providing this information as an actual example of a formal sanction for violating cultural norms of a law enforcement agency. The Affiant expected, and was not surprised by, the decision of the Board to deny the Affiant a retirement badge. The institutional behavior is consistent with behavior that is described in sociological literature. (One of the Affiant's bachelors' degrees is in sociology and one of his secondary teaching licenses issued to him by the Wisconsin Department of Public Instruction is also in sociology.) The Affiant was intending to decline the award of a retirement badge had one been offered to him by the Kenosha Professional Police Association.

to what level, the Bell's homicide contributed to his decision to take his life. Strausbaugh and his wife did have marital problems at the time of his suicide; however, according to Heather Strausbaugh, Officer Strausbaugh's wife, Officer Strausbaugh was troubled by the Bell homicide. She reported that her husband changed after the shooting. The following has been copied and pasted from the Franklin, Wisconsin Police report on Strausbaugh's suicide: (app. p. 59.)

to say that they've been having trouble with their marriage for some time. Heather said that they have not been getting along for a while and stated that after her husband was involved in a Officer involved shooting in 2004 (MICHAEL E BELL case), which had gotten a lot of publicity that he changed as a person. Heather stated she blames the BELL'S for all of her marriage problems and for this occurring as she said that Erich changed which ultimately had a detrimental effect on her marriage. Heather said that on Tuesday 10/26/10, they sought help through

- 81)The well documented code of silence and enforcement mechanism of peer pressure is a very real and powerful force in many police departments. It is especially powerful within the Kenosha Police Department.

Conclusion:

- 82)One of the most disputed aspects of the Bell homicide is the question of whether or not Bell was actually attempting to disarm Strausbaugh. Bell was shot in the head to end what the officers at the scene believed was the imminent danger that was caused by either the fact, or the mistaken belief on the part of Officer Stausbaugh, that Bell was attempting to disarm Strausbaugh.
- 83)If Bell was actually attempting to disarm Strausbaugh, then most officials entrusted with the task of ruling on the justification of the homicide would rule the homicide was justified. If Bell was not attempting to disarm Strausbaugh, objective and ethical officials would likely rule the homicide as unjustified. However, if Strausbaugh mistakenly believed that Bell was attempting to disarm him and Strausbaugh's holstered handgun was actually caught and captured by the driver's-side mirror of the car where Bell and the officers were struggling, the issue of justification is less clear. The Affiant believes that in this third scenario, since the shooting would have stemmed from an unanticipated and uncontrollable event, the officers would not be subjected to criminal charges. The Bell family would have been compensated through a civil action and the shooting would have been considered a tragic, yet understandable and excusable, mistake.
- 84)However, in this instance, as in many other instances that have been documented as part of this filing with the United States Justice Department, the officers involved, and more than likely the supervising and investigating police officials, chose not to tell the truth about what actually happened. The affiant believes that the culture of dishonesty that he described in his other affidavit of this filing contributed to the decision to lie instead of report the truth about this matter. Once the decision was made to lie and conceal, the

decision was set in stone. The peer pressure that has been previously addressed in this affidavit will insure that the participants in the conspiracy will stay in line and keep the secret about the lie.

- 85) Part of the lie that is being kept secret required that Officer Gonzales be positioned at the front of the car when he fired the fatal shot. This was necessary because had it been admitted that he fired the fatal shot while standing to Bell's right, between Strausbaugh and Lieutenant Krueger, Gonzales should/could/would have been able to determine that Strausbaugh's holstered handgun was actually caught and captured by the car mirror and not being held by Bell, as officially declared.
- 86) There is only one version of the truth. When a person lies he or she must control, or account for, all of the intervening variables that exist in the situation. These variables grow exponentially with the complexity of the lie. Therefore, it is nearly impossible to account for all of these intervening variables.
- 87) In this instance, the officers and officials who perpetrated this lie failed to account for the indisputable fact that Bell was actually shot in the right side of the head, not the left side of the head as testified by Officer Gonzales and Lieutenant Krueger. Furthermore, the subsequent changes in accounts and the attempts by the reenactments to make the shooting conform to the indisputable forensic evidence were ultimately unsuccessful.
- 88) The Affiant believes that top-level police and city officials had to be aware of, and participated in, this continuing fraud and concealment of the truth.²² The taxpayer funds needed to hire the attorneys and experts in the Bell case had to have been approved by top city and police department officials. It is likely the City of Kenosha and the Kenosha Police Department receives federal grants and funding; therefore, arguably, a case can be made that the funding for the concealment of the truth and fraud in the Bell case was, in part, financed by federal tax dollars.
- 89) The Bell shooting was never subjected to a legitimate criminal investigation. No one can successfully argue that the investigation into Bell's death, conducted by the Kenosha Police Department, was anything more than a cover-up. The involved officers were cleared by their co-workers in two days. This time frame is simply too short for any legitimate investigation into a homicide. The fact that the police department never reviewed the autopsy protocol of Dr. Kelly before making their ruling supports the argument that the

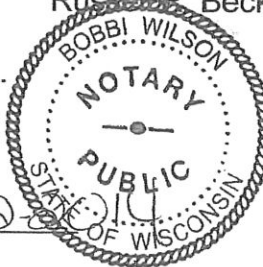
²² Captain Randall Berner was the point person for the police department's handling of the Bell case. The Affiant reported that Captain Berner concealed evidence, wrote false reports, and committed perjury in the employment termination investigation and hearing of Kenosha Police Officer Twain Robinson from April through August of 2005. This was the same time in which he handled the Bell investigation. This fact certainly constitutes a pattern and practice of Civil Rights violations. (More information on Captain Berner's involvement in the Robinson case can be found in the Affiant's other affidavit that his part of this filing in paragraphs #44-85.)

91) The United States Justice Department has an opportunity to conduct this investigation. As with other criminal conspiracies, one, or some, of the police and city official participants will likely speak the truth to the investigating federal agents about what actually occurred when Michael Bell was killed. The Affiant believes the compelling evidence of deception, concealment, and perjury on the part of Kenosha Police officials in the Bell case cries out for a federal criminal investigation into this homicide.

State of Wisconsin)
)ss.
County of Kenosha)

~~Russell B. Beckman~~

Notary Public, State of Wisconsin
My Commission expires on 8 -



**Appendix to the Affidavit of Russell Beckman Regarding the Circumstances
Surrounding the Possession of the Handgun of Officer Eric Strausbaugh During
the Encounter with Michael E. Bell**

Kenosha City/County Joint Services Evidence/Property Inventory Card, Property Card Log #114799. (Exhibit #60) (2004, November 9).	-----page 27
Photo of Officer Strausbaugh after the encounter with Michael E. Bell. (Exhibit #59) (2004, November 9).	-----page 28
Confidential report of laboratory findings. Wisconsin State Crime Laboratory. Lab Case #R04-3774. (2005, January 6).	-----page 29
Supplementary report of laboratory findings. Wisconsin State Crime Laboratory. Lab Case #R04-3774. (2005, May 11).	-----page 31
E-mail from Dr. Alan Friedman to Sharon Polakowski, Wisconsin State Crime Laboratory. (2008, March 13).	-----page 33
Letter from Sharon Polakowski to Dr. Alan Friedman. (Exhibit #263)(2008, May 5).	-----page 35
Written statement of Officer Strausbaugh. (Exhibit #58) (2004, November 9).	-----page 37
Written statement of Lt. Krueger. (Exhibit #164) (2004, November 9).	-----page 41
Report of Captain Randall Berner. (Exhibit #248) (2004, November 11).	-----page 44
Meeting Minutes. Board of Directors, Kenosha Professional Police Association. (2011, December 19).	-----page 49
Police report on the suicide of Officer Erich Strausbaugh by the Franklin, Wisconsin Police Department. Case #10-004577. (2010, October 13).	-----page 51

CD "D"

This CD holds the following digital files from the discovery materials from the case, "Estate of Michael Edward Bell, et. al. vs. Officer Erich Strausbaugh, et. al." Civil Action No. 05-C-1176. United States District Court, Eastern District of Wisconsin:

Squad video of the traffic stop of Michael Bell. file name:
"Bell Enhanced Audio". (2004, November 9).

Expert report of Robert Willis. (Exhibit #166A.) file name:
"166A_Willis_20080115_1097195". (2008, March 18).

Video reenactment of the Bell shooting. file name: "VTS_01_1".
(2007, December 12). (Note: This video file is best viewed with "clear.fi")

Deposition of Lt. Thomas Vieth. file name: "Dep_Viet981936"
(2007, June 29).

Deposition of Lt. David Krueger. file name: ""Dep_Krue951226"
(2007, April 30).

KENOSHA CITY/COUNTY JOINT SERVICES
EVIDENCE/PROPERTY INVENTORY CARD

PROP CARD# 1 OF 1

AGENCY: ☒ POLICE ☐ SHERIFF

JS OTHER:

PROP. CARD LOG# 114799

OFFICE USE ONLY

SHELF UNIT: 1

BIN: 28 East

PACKAGE: (2x) 1/2" x 1/2" x 1/2"

VEHICLE:

VIN:

COMMENTS:

THE BELOW LISTED PROPERTY WAS ☒ TAKEN ☐ FOUND ON THIS 2ND OF NOV 2004 AT 10:15
HOURS AT 1000 55 ST BY Det. D. Strausbaugh #354

TAKEN FROM ERIC STRAUSBAUGH ADDRESS 1000 55 ST PHONE

OWNER NAME KPO ADDRESS PHONE

OFFENSE AS REPORTED: OFFICER INVOLVED SHOOTING DATE: 11-9-04 TIME: 02:11

HELD AS: ☒ EVIDENCE ☐ FOUND PROPERTY ☐ OTHER:

RECOMMENDED RELEASE NO ☒ YES/WHEN SEE DET. STRAUSBAUGH

MAKE: MODEL: STYLE: PLATE: TOWED TO:

ITEM	SERIAL	BRAND	MODEL	ADD'L DESCRIPTION
1. POLICE HOLSTER, BLACK, TAKEN FROM P.O. ERIC STRAUSBAUGH				
2. KENOSHA POLICE UNIFORM SHIRT, SIZE 17-36, TAKEN FROM P.O. STRAUSBAUGH				
3. KENOSHA POLICE UNIFORM TROUSERS, SIZE 34 REG, TAKEN FROM P.O. STRAUSBAUGH				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

RECEIVED BY: D. Strausbaugh

DATE 11-9-04 AT 2:15 HOURS

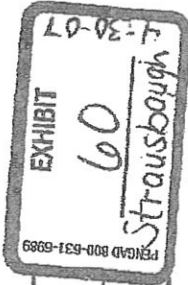




EXHIBIT
59
Straussbaugh

28

COPY



Wisconsin Department of Justice
Division of Law Enforcement Services
State Crime Laboratory-Milwaukee
1578 South 11th Street
Milwaukee, WI 53204-2860
(414) 382-7500
FAX (414) 382-7507

Submitting Agency:

Chief Daniel Wade
Attn: Todd Thorne
Kenosha Police Department
1000 55th Street
Kenosha WI 53140-3794

Date: January 06, 2005

Lab Case: R04-3774

Agency No.: 04-156477

Laboratory Analyst:

Sharon M. Polakowski
Sharon M. Polakowski
DNA Analysis 1-12-05
SPM

Case Name: Bell, Michael E. (S)

I do hereby certify this document, consisting of 2 page(s), to be a true and correct report of the findings of the State Crime Laboratory on the items examined as shown by this report.

Peggy A. Lautenschlager
ATTORNEY GENERAL

John A. Hulse
DESIGNEE

Laboratory Report

The following items were submitted to the DNA Analysis Unit for examination:

- Item A: Gun holster from Erich Strausbaugh
- Item B: Buccal swab standard from Erich Strausbaugh
- Item C: Buccal swab standard from Sgt. Bartholomew
- Item D: Bloodstain standard from Michael Bell, Jr.
- Item E: Swabs from weapon



The gun holster (Item A) was swabbed for analysis purposes. The swab was subdesignated Item A1.

Six (6) of the twelve (12) swabs from the gun (Item E) were selected for analysis. These swabs were processed in groups of two, which were subdesignated Items E1, E2, and E3.

Human deoxyribonucleic acid (DNA) recovered from the swab from the holster (Item A1) and the swabs from the gun (Items E1, E2, and E3), as well as from the standards from Michael Bell, Jr. (Item D), Erich Strausbaugh (Item B), and Sgt. Bartholomew (Item C) was amplified using the polymerase chain reaction (PCR) and typed for short tandem repeat (STR) loci using the Applied Biosystems AmpFISTR Profiler Plus and AmpFISTR COfiler kits. The amplified DNA was typed for the following thirteen STR loci: D3S1358, vWA, FGA, D8S1179, D21S11, D18S51, D5S818, D13S317, D7S820, D16S539, TH01, TPOX, and CSF1PO and for amelogenin, a sex-specific marker.

The STR profiles developed from the swab from the holster (Item A1) and from the swabs from the gun (Items E1, E2, and E3) are mixtures of DNA that also exhibit degradation of sample. Both Michael Bell, Jr. and Sgt. Bartholomew are excluded as possible contributors to the DNA mixtures on these items.

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It should be noted that identical twins share all genetic information, including STR DNA profiles.

The evidence from this case will be returned to the submitting agency at the earliest convenient opportunity.

[Signature]
SMM

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State Crime Laboratory-Milwaukee
1578 South 11th Street
Milwaukee, WI 53204-2850
(414) 382-7600
FAX (414) 382-7507

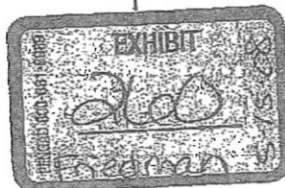
Submitting Agency:

Chief Daniel Wade
Attn: Todd Thorne
Kenosha Police Department
1000 55th Street
Kenosha WI 53140-3794

Date: May 11, 2005

Lab Case: R04-3774

Agency No.: 04-156477



Laboratory Analyst:

Sharon M. Polakowski
Sharon M. Polakowski
DNA Analysis

Case Name: Bell, Michael E. (S)

I do hereby certify this document, consisting of 2 page(s), to be a true and correct report of the findings of the State Crime Laboratory on the items examined as shown by this report.

Peggy A. Lautenschlager
ATTORNEY GENERAL

Sharon M. Polakowski
DESIGNED

Supplemental Laboratory Report

As previously reported (see laboratory report dated January 6, 2005), a swab from a gun holster from Erich Strausbaugh (Item A) and selected swabs from a gun (Items E1, E2, and E3) were subjected to DNA analysis. STR DNA profiles developed from the swab from the gun holster (Item A1) and from the swabs from the gun (Items E1, E2, and E3) are mixtures of DNA that also exhibit evidence of degradation of the samples. Both Michael Bell, Jr. and Sgt. Bartholomew are excluded as possible contributors to the DNA mixtures on these items.

The major component of the DNA mixture profile developed from the swab from the holster (Item A1) matches the profile from Erich Strausbaugh at ten of the thirteen loci tested. No major profile could be determined at the remaining three loci.

The major component of the DNA mixture profile developed from one set of swabs from the gun (Item E1) matches the profile from Erich Strausbaugh at twelve of the thirteen loci tested. No major profile could be determined at the remaining locus.

The major component of the DNA mixture profile developed from another set of swabs from the gun (Item E3) matches the profile from Erich Strausbaugh at eleven of the thirteen loci tested. No major profile could be determined at the remaining two loci.

It is the opinion of this examiner that the only reasonable scientific explanation for these results is that Erich Strausbaugh is the source of the major component of the DNA mixture profiles recovered from the swab from the holster (Item A1) and two sets of swabs from the gun (Items E1 and E3). This conclusion is based on a statistical analysis using a database of unrelated Caucasian, Black, and Hispanic individuals obtained from the FBI.

No major component of the DNA mixture profile found on the remaining set of swabs from the gun (Item E2) could be

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determined.

It should be noted that identical twins share all genetic information, including STR DNA profiles.

[Signature]
[Signature]

32

info@forensicdnaconsultant.com

From: Alan Friedman [info@forensicDNAconsultant.com]
Sent: Thursday, March 13, 2008 1:53 PM
To: Sharon Polakowski (polakowskism@doj.state.wi.us)
Subject: Your Case: R04-3774

Re: Estate of Michael Edward Bell, et al. v. Officer Erich R. Strausbaugh, et al.
Case No. 05-C-1176
WSCL case No.: R04-3774

Good morning Sharon,

I got a call from defense council in the above-cited case telling me that authorization has been issued and Lt. Maccari called Janet Champion as well.

To avoid putting you on the spot and allow you to confer with your colleagues, I thought it best to address the issues in this case in writing.

According to the WSCL procedures manual (Chapter VI- 41 -(7/04 Revision7)), an interpretation threshold of 50 rfu *"may be used for exclusionary purposes only"*. Clearly, the forensic context of the case dictates whether or not DNA evidence is exclusionary.

So here is the forensic context as I understand it. Officer Strausbaugh and others in the Kenosha Police Department are accused of the wrongful death of Michael Bell. According to the police statements, Mr. Bell grabbed officer Strausbaugh's weapon and/or holster in the course of an attempt to arrest him. A struggle ensued and officer Strausbaugh yelled *"he's got my gun"*. At this point, another officer (Gonzales) shot and killed Mr. Bell.

Swabs were collected from Strausbaugh's holster (item A) and weapon (item E). In your report of January 6, 2004, you concluded that *"Both Michael Bell, Jr. and Sgt. Bartholomew"* were both excluded as contributors.

I am requesting that you re-analyze the electropherograms from the holster (item A) at 50 rfu and issue a supplemental report of your findings. The reasons for this request are as follows:

1. The finding of Michael Bell's DNA on the gun or holster, would be exculpatory for officer Strausbaugh and the Kenosha Police Department and therefore, would be allowed under the WSCL procedures manual (as cited above).
2. It's clear from my review of the data, that there are at least two minor contributors on the holster (item A) and that Erich Strausbaugh is the major contributor. That officer Strausbaugh is the major contributor is not surprising since the repeated handling of the holster in the course of his duty would account for his own DNA.
3. If Bell had in fact grabbed the weapon and/or holster, it would be expected that this hand to weapon and/or hand to holster contact would have resulted in the deposition of trace DNA (as defined by Wickenheiser¹). According to your Amplification Data Sheet of December 16, 2004 (page 10/97) you amplified ~1.5 nanogram of total DNA. If Michael Bell was a minor contributor, his profile may not have shown up at 100 rfu given the large excess of officer Strausbaugh's own DNA. If Strausbaugh's DNA was not present, you might have taken steps to increase the sensitivity of the analysis by:
 - a. Applying a larger volume of extract

5/14/2008

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- b. Microcon concentrated the extract to increase the concentration of DNA
 - c. Increased the injection time of the sample
4. Any of these step would have made it more likely to interpret the minor contributors to item A and possibly exculpate the defendants in this case.

I look forward to hearing from you. Please feel free to contact me by email or phone at the contact information below.

Sincerely,

Alan L. Friedman, PhD
Helix Biotech, Inc.
414-263-2074
helix@execpc.com

1. Wickenheiser RA. Trace DNA: a review, discussion of theory, and application of the transfer of trace quantities of DNA through skin contact. J Forensic Sci 2002;47 (3):442-450.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Raymond P. Taffora
Deputy Attorney General

Division of Law Enforcement Services
State Crime Laboratory - Milwaukee

1578 South 11th Street
Milwaukee, Wisconsin 53204-2860
414/382-7500
FAX 414/382-7507

May 5, 2008

Dr. Alan Friedman
Helix Biotech, Inc.
2821 N. 4th Street, Dept. 38
Milwaukee, WI 53212



RE: Laboratory Case R04-3774
Estate of Michael Edward Bell, et al. v. Officer Erich R. Strausbaugh,
et al.

To Dr. Friedman:

This letter is in response to your request for reanalysis of the electropherograms in this case at 50 rfus and the issuance of a supplemental report. Per your request, I reanalyzed the electropherograms of laboratory items A1, E1, E2, and E3 at 50 rfus using the Genescan/Genotyper software. Additionally, the electropherograms of Item A1 were reanalyzed at 50 rfus using GeneMapper software. After careful consideration of the resulting data and in consultation with Gretchen DeGroot, Technical Unit Leader of the DNA Analysis Unit at the Wisconsin State Crime Laboratory in Milwaukee, my conclusions remain unchanged from those stated in my laboratory report dated January 6, 2005; no supplemental report will therefore be issued.

Based on my years of forensic experience with touched items, I would like to point out that the lack of DNA from Michael Bell on the gun or holster does not mean that he did not touch them, just as finding his DNA on those items would not mean that he did touch them. The absence of evidence is not necessarily evidence of absence; the DNA results that I found on the evidentiary items I examined simply cannot be attributed to Michael Bell.

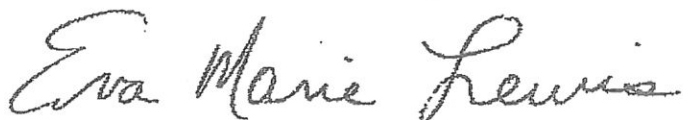
If you need anything else, please let me know.

Sincerely,

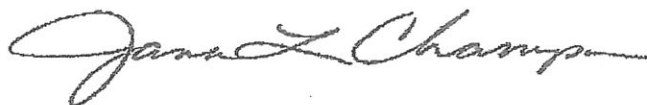
Sharon M. Polakowski
Forensic Scientist - Senior
DNA Analysis Unit

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Wisconsin State Crime Laboratory - Milwaukee

A handwritten signature in cursive script that reads "Eva Marie Lewis".

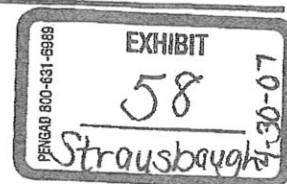
Eva M. Lewis
Supervisor - DNA Analysis Unit
Wisconsin State Crime Laboratory - Milwaukee

A handwritten signature in cursive script that reads "Jana L. Champion".

Jana L. Champion
Director - WI State Crime Laboratory, Milwaukee

KENOSHA POLICE DEPARTMENT

Statement

DATE OF STATEMENT:
11/09/04DATE & TIME OF INCIDENT:
11/09/04 @ 02:11 hoursPAGE NUMBER:
1 of 4CASE NUMBER:
04-156477

NAME: ERICH R. STRAUSBAUGH

DOB: 06/12/76

SEX/RACE: M/W

ADDRESS: 1000 55 St.

TELEPHONE:

I AM A POLICE OFFICER WITH THE KENOSHA POLICE DEPARTMENT. I HAVE BEEN EMPLOYED AS AN OFFICER FOR 4 ½ YEARS. I WAS WORKING MY JOB AS A THIRD SHIFT OFFICER ON MONDAY, 11/08/04. I STARTED MY TOUR OF DUTY THAT NIGHT AT 10:00 P.M. DURING MY SHIFT, SOMETIME AROUND 1:30 A.M. ON TUESDAY, 11/09/04, I MADE A TRAFFIC STOP ON 14 AVE IN THE 8000 BLK. I HAD PULLED OVER A FEMALE FOR FAILING TO STOP AT A STOP SIGN ON SHERIDAN RD. I ISSUED THE FEMALE A CITATION, AND I WAS BACKED UP ON THE TRAFFIC STOP BY OFFICER ERIC WEIDNER. AFTER ISSUING THE CITATION AND RELEASING THE FEMALE DRIVER, I STAYED AT THAT LOCATION AND HAD A CONVERSATION WITH OFFICER WEIDNER. AT THIS TIME WE WERE STILL ON 14 AVE IN THE 8000 BLK, AND OUR SQUAD LIGHTS WERE STILL ACTIVATED. TRAFFIC WAS VERY LIGHT AT THIS TIME. AS OFFICER WEIDNER AND I WERE TALKING WITH EACH OTHER, STANDING OUTSIDE OUR SQUADS, I OBSERVED A GREEN COLORED SUV, WHICH APPEARED TO BE A FORD EXPLORER, DRIVING SOUTHBOUND ON 14 AVE FROM 80 ST. I SAW THAT THERE WAS A WHITE MALE DRIVING THE SUV, AND I COULD NOT TELL IF THERE WAS ANYONE ELSE IN THE VEHICLE AT THIS POINT. I DID NOT RECOGNIZE THE DRIVER AS THE SUV DROVE PAST MYSELF AND OFFICER WEIDNER. I SAW AS THE SUV STOPPED AT THE STOP SIGN AT 81 ST AND 14 AVE. IT APPEARED THAT THE SUV DID MAKE A COMPLETE STOP, AND AT THE VERY LEAST IT DID NOT BLOW THROUGH THE STOP SIGN. HOWEVER, AFTER MAKING THE STOP THE SUV TOOK OFF FROM THE STOP SIGN AT A HIGH RATE OF SPEED. I COULD HEAR THE SOUND OF THE ENGINE, AND SAW THE FRONT END OF THE SUV APPEAR TO LIFT UP AS IT TOOK OFF. BASED ON MY TRAINING AND EXPERIENCE I ESTIMATED THAT THE SUV REACHED A SPEED OF APPROXIMATELY 40 MILES PER HOUR. I TURNED TO OFFICER WEIDNER AND COMMENTED ABOUT THE WAY THE SUV WAS DRIVING, AND SAID THAT I WAS GOING TO GO PULL THE DRIVER OVER. BOTH OF OUR SQUADS WERE FACING NORTH, WITH MY SQUAD, #2689, THE FURTHEST NORTH OF THE TWO. I TURNED AROUND ON 14 AVE TO GO AFTER THE SUV SOUTHBOUND. I SAW THAT THE SUV PULLED OVER IN THE 8300 BLK OF 14 AVE. MY SQUAD EMERGENCY LIGHTS WERE STILL ACTIVATED AS I TURNED AROUND AND WENT AFTER THE SUV, AND I POSITIONED MY SQUAD BEHIND IT IN THE 8300 BLK OF 14 AVE. OFFICER WEIDNER PULLED HIS SQUAD BEHIND MINE ON 14 AVE. THE DRIVER OF THE SUV WAS EXITING THE SUV AS I STOPPED. THE SUV HAD WISCONSIN TEMPORARY PLATES ON IT. I EXITED MY SQUAD AND TOLD THE DRIVER TO GET BACK INTO HIS VEHICLE. I REPEATED THAT ORDER AT LEAST TWICE, BUT THE DRIVER IGNORED ME AND WALKED TOWARDS MY SQUAD NORTHBOUND. I MET THE DRIVER AT THE REAR DRIVER'S SIDE OF THE SUV, AND SAW THAT HE WAS WEARING A BROWN LEATHER JACKET AND WAS PUTTING HIS HANDS INTO THE JACKET POCKETS. BECAUSE THE DRIVER WAS IGNORING MY COMMANDS I PLACED MY HAND ON THE DRIVER'S SHIRT

Witness:

Det. Det. [Signature]
PO Strausbaugh

Date:

11-09-04

RECORDS BUREAU

Signed:

*PO Strausbaugh**37*

KENOSHA POLICE DEPARTMENT

Statement

DATE OF STATEMENT:
11/09/04

DATE & TIME OF INCIDENT:
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COLLAR AREA AND ALSO GRABBED ONTO ONE OF HIS ARMS TO TAKE HIM BACK TO HIS VEHICLE. I COULD FEEL MUSCLE TENSION IN THE DRIVER'S ARM AT THIS POINT. I WANTED HIM BACK IN HIS VEHICLE FOR MY OWN SAFETY. THE DRIVER, AS I WAS LEADING HIM BACK TO THE DRIVER'S DOOR, SAID THAT HE WASN'T GETTING BACK INTO THE CAR. AT THAT POINT I DETECTED AN ODOR OF AN ALCOHOLIC BEVERAGE ON THE DRIVER'S BREATH. I ALSO THEN SAW A WHITE MALE PASSENGER IN THE FRONT PASSENGER SEAT OF THE SUV. BECAUSE OF THOSE OBSERVATIONS I DECIDED THAT IT WOULD NOT BE A GOOD IDEA TO HAVE THE DRIVER GET BACK INTO THE VEHICLE. I ALSO HEARD THE PASSENGER AT THIS POINT SAY SOMETHING LIKE "MICHAEL, JUST CHILL OUT". I DECIDED TO WALK THE DRIVER BACK TO MY SQUAD TO PAT HIM DOWN FOR OUR SAFETY. I COULD FEEL TENSION STILL IN THE DRIVER'S ARM, AND IT WAS AT THIS POINT THAT I ALSO RECOGNIZED THE DRIVER AS MICHAEL BELL. I HAD ARRESTED BELL FOR A FELONY DRUG OFFENSE IN SEPTEMBER OF 2004 ALONG WITH A RESISTING ARREST CHARGE. DURING THE SEPTEMBER ARREST BELL FOUGHT WITH ME AND OFFICER DEMARIO, AND HAD TO BE PEPPER SPRAYED BECAUSE OF THE LEVEL OF HIS RESISTANCE. NOW ON 11/09/04, AFTER RECOGNIZING BELL, I RECALLED THAT I HAD A COURT DATE SCHEDULED FOR BELL'S DRUG CHARGE ON WEDNESDAY, 11/10/04. I KNEW THAT BELL HAD TO BE OUT ON BOND RESTRICTIONS FROM THE DRUG CHARGE, AND KNEW THAT HE WAS PROBABLY COMMITTING A FELONY BY VIOLATING THE FELONY BOND CONDITIONS AT THIS TIME. AS I BROUGHT BELL BACK TO THE SQUAD CAR I ATTEMPTED TO PLACE BELL'S HANDS ON THE REAR OF THE SQUAD TO PAT HIM DOWN. BELL KEPT REMOVING HIS HANDS FROM THE REAR OF THE SQUAD AS I TRIED TO PAT HIM DOWN. I ASKED BELL IF HE HAD A NO ALCOHOL RESTRICTION AS PART OF HIS BOND, AND THE ONLY RESPONSE I HEARD OUT OF BELL WAS "HEY MAN, YOU DON'T HAVE TO DO THIS". I TRIED TO COMPLETE THE PAT DOWN AS BEST I COULD AND TOLD BELL THAT HE WAS GOING TO HAVE TO HAVE A SEAT IN MY SQUAD. BELL SAID "NO I DON'T" AND TRIED TO WALK AWAY. I SAID THAT WE WOULD THEN CONDUCT FIELD SOBRIETY TESTS ON THE SIDEWALK. I DID NOT HAVE ANY HANDS ON BELL AT THIS TIME, AND TOLD BELL THAT I WANTED HIM TO GO TO THE SIDEWALK. BELL STATED "YOU'RE NOT DOING THIS TO ME AGAIN" AND STARTED TO WALK WESTBOUND THROUGH THE FRONT YARD OF THE HOUSE NEAR THE TRAFFIC STOP. BELL WAS WALKING IN A NORTHWEST DIRECTION AND I RAN UP TO HIM AND GRABBED HIS LEFT ARM WHILE OFFICER WEIDNER GRABBED BELL'S RIGHT ARM. I TOLD BELL THAT HE WAS UNDER ARREST, AND I AGAIN FELT BELL TENSE HIS MUSCLES. BELL STRUGGLED TO GET AWAY FROM US, AND I DID TRIP BELL TO TAKE HIM TO THE GROUND IN ORDER TO GAIN CONTROL OF HIM. BELL CONTINUED TO STRUGGLE, WITH HIS MUSCLES TENSED UP AND HIS HANDS BALLED UP INTO FISTS. WE WERE UNABLE TO GET BELL'S HANDS INTO A POSITION TO HANDCUFF HIM OR GAIN CONTROL OVER HIM. AT THIS POINT I ATTEMPTED TWO OR THREE KNEE STRIKES TO BELL'S LEGS, BUT THEY WERE INEFFECTIVE. I MADE A DECISION, BECAUSE OF BELL'S STRENGTH AND OUR INABILITY TO GET HIM UNDER CONTROL, TO USE MY TAZER GUN ON BELL. I INFORMED OFFICER WEIDNER THAT I WAS USING THE TAZER, AND AFTER OFFICER WEIDNER CLEARED FROM BELL I FIRED THE TAZER PROBES INTO BELL'S BACK FROM ABOUT TWO FEET AWAY. THE TAZER PRONGS STUCK IN BELL'S JACKET, AND THERE APPEARED TO BE A REACTION FROM BELL. I SAW BELL TENSE UP AS THE FIVE SECOND BURST

Witness:

Det. Del Al

Date:

11-09-04

RECORDS BUREAU

Signed:

PO Strawn

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KENOSHA POLICE DEPARTMENT

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FROM THE TAZER WAS FUNCTIONING. BELL THEN SHOT UP TO HIS FEET AND RAN FULL SPEED AWAY FROM US TOWARDS THE DRIVEWAY OF THE HOME THERE. OFFICER WEIDNER AND I PURSUED BELL ON FOOT AND AT ONE POINT, AS I GRABBED ONTO BELL FROM BEHIND I FELT A SURGE OF AN ELECTRIC SHOCK FROM THE TAZER. THE SHOCK WAS NOT ENOUGH TO INCAPACITATE ME. I DON'T THINK THAT I EVER RELEASED THE TRIGGER OF THE TAZER AFTER FIRING THE PROBES INTO BELL'S JACKET. I HAD GRABBED AROUND OF BELL AS WE WERE IN THE DRIVEWAY, BETWEEN A VEHICLE AND THE HOUSE. I WAS FACING NORTH AND BELL WAS FACING SOUTH. THE AREA WAS VERY CONFINED, AND BELL WAS FIGHTING ME WILDLY AT THIS POINT. BELL PUNCHED ME IN THE BACK OF THE HEAD AND IN THE RIGHT CHEEK, AND BELL ALSO GRABBED AROUND OF ME AND SHOVED ME INTO THE SIDE OF THE HOUSE. I REMEMBER THAT I WAS FEELING TIRED AND THAT BELL WAS PROBABLY GETTING THE BEST OF ME AT THIS POINT. I ALSO FELT BELL'S HAND ON MY MIDSECTION NEAR MY GUN. I FELT IN MY MIND THAT BELL WAS IN FACT GOING FOR MY GUN, AND YELLED OUT TO WEIDNER THAT BELL WAS GOING FOR MY GUN. I HAD HIT BELL IN THE HEAD WITH MY TAZER, AND HAD DRIVE STUNNED BELL WITH THE TAZER IN THE MIDSECTION. OFFICER WEIDNER TOLD ME TO DROP THE TAZER SO HE COULD ASSIST ME IN TRYING TO SUBDUE BELL. I DID DROP THE TAZER AT THAT POINT AND OFFICER WEIDNER AND I NOW BOTH FOUGHT WITH BELL. SOMEHOW WE WERE ABLE TO GET OUT OF THE CONFINED AREA OF THE DRIVEWAY BETWEEN THE HOUSE AND VEHICLE, AND WE WERE ABLE TO GET BELL TO THE GROUND AGAIN IN THE DRIVEWAY. I WAS GETTING EXHAUSTED AND I COULD NOT FIND MY RADIO TO CALL FOR ASSISTANCE. I WAS NOT AWARE AT THIS POINT THAT WEIDNER HAD CALLED FOR HELP. AS WE WERE ON THE GROUND WITH BELL A WOMAN CAME OUT FROM THE HOUSE THERE. THE WOMAN WAS YELLING THAT THIS WAS HER SON, AND SHE CAME UP ON TOP OF US. I TOLD THE WOMAN THAT SHE HAD TO BACK OFF, WHICH SHE INITIALLY DID. BECAUSE WE STILL HAD NOT GAINED CONTROL OVER BELL I AGAIN ATTEMPTED KNEE STRIKES TO BELL, AT WHICH TIME THE WOMAN REACTED BY CHARGING AT US AGAIN. I HAD TO PUT MY HAND ON THE WOMAN AND TELL HER THAT SHE WOULD HAVE TO BACK AWAY OR SHE WOULD BE ARRESTED. AT THIS POINT I HEARD SIRENS, AND I WAS ABLE TO LOCATE MY RADIO NOW AND GOT ON THE AIR, YELLING THAT WE WERE IN THE BACK YARD. I SAW LT. KRUEGER ARRIVE FIRST. I WAS ON THE RIGHT SIDE OF BELL WITH WEIDNER ON BELL'S LEFT. LT. KRUEGER APPLIED A DRIVE STUN TO BELL'S BACK WITH HIS TAZER. BELL JUMPED RIGHT UP OFF OF THE GROUND AS LT. KRUEGER TAZED HIM. BELL CAME RIGHT AT ME AND GRABBED ME AROUND MY MIDSECTION. I WAS PUSHED UP AGAINST A CAR THAT WAS PARKED CLOSE TO THE GARAGE IN THE DRIVEWAY. BELL HAD HIS ARMS AROUND ME, AND HE WAS MORE TO MY RIGHT SIDE OF MY BODY. I WAS TRYING TO GAIN CONTROL OF AN ARM AND I THINK THAT LT. KRUEGER MAY HAVE BEEN CONTINUING WITH THE DRIVE STUNS FROM HIS TAZER, BUT I'M NOT SURE ABOUT THAT. I AGAIN FELT BELL'S HANDS BY MY GUN, AND THIS TIME BELL HAD AROUND OF MY GUN IN THE HOLSTER. BELL HAD MY ENTIRE HOLSTER AND GUN BELT TWISTED ON MY BODY, AND AS I REACHED TO TRY TO GAIN CONTROL OF MY GUN I FELT THAT THE SAFETY THUMB SNAP ON THE HOLSTER WAS NOW OPEN. I COULD FEEL BELL'S HAND ON THE GRIP PORTION OF MY GUN WHILE IT WAS STILL IN THE HOLSTER. I HAD MY HAND ON THE REAR SIGHT OF THE GUN, APPLYING PRESSURE TO ATTEMPT TO KEEP BELL FROM PULLING

Witness:

Det. David A. [Signature]

Date:

11-08-04

Signed:

PO Thomas [Signature]

RECORDS BUREAU

39

KPD - Cert 00093

KENOSHA POLICE DEPARTMENT

Statement

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11/09/04

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04-1564-77

THE GUN OUT OF THE HOLSTER. I COULD FEEL BELL PULLING UP ON THE GUN AS I PUSHED DOWN ON IT. I YELLED THAT BELL HAD MY GUN, AND I REPEATED THAT STATEMENT, THAT HE HAD MY GUN. I THINK I HEARD ANOTHER OFFICER REPEAT WHAT I HAD SAID, AND THE NEXT THING I HEARD WAS A LOUD BANG. SUDDENLY EVERYTHING STOPPED. IT DIDN'T REGISTER RIGHT AWAY THAT I HAD HEARD A GUN SHOT, BUT I THEN SAW A LOT OF BLOOD AND SAW BELL LAYING ON THE HOOD OF THE CAR. I THEN SAW OFFICER GONZALES ON THE SCENE FOR THE FIRST TIME, AND SAW THAT HE HAD HIS DUTY WEAPON DEPLOYED.. I MADE SURE THAT MY GUN WAS NOW SECURE IN MY HOLSTER, SNAPPING THE THUMB SNAP. I DID NOT HANDLE MY GUN AFTER THAT POINT. SGT. BARTHOLOMEW TOOK POSSESSION OF MY GUN AT THE P.D. FOLLOWING THIS INCIDENT. LT. KRUEGER REQUESTED A RESCUE SQUAD AT THIS POINT, AND I STOOD WITH MY HANDS ON MY LEGS GASPING FOR AIR, COMPLETELY EXHAUSTED. I WAS SENT BACK TO THE POLICE DEPARTMENT AT THAT POINT. AT THE POINT THAT BELL WAS PUNCHING ME I WAS FEELING PAIN. MY UNIFORM SHIRT WAS RIPPED BY BELL WHILE FIGHTING WITH HIM. IN MY MIND MY K.P.D. ISSUED GUN WAS BEING TAKEN AWAY FROM ME BY MICHAEL BELL IN THIS FIGHT. I WAS IN FEAR FOR MY OWN LIFE AS WELL AS THE LIVES OF OTHER K.P.D. OFFICERS AT THE SCENE. I HAD GUN BELT "KEEPERS" ON MY BELT AT THE TIME OF THIS INCIDENT. BELL PULLED ON MY GUN WITH ENOUGH FORCE TO TWIST MY GUN BELT AROUND TO THE POINT THE HOLSTER WAS NOW ON THE FRONT OF MY BODY, POINTING DOWN THE FRONT OF MY RIGHT LEG, EVEN WITH THE KEEPERS IN USE. AT THE TIME I FIRST RECOGNIZED BELL I WAS AWARE FROM MY PREVIOUS CONTACTS WITH HIM THAT HIS DRIVING STATUS WAS REVOKED. I KNEW THAT I WOULD BE TAKING HIM INTO CUSTODY AND WAS NOT GOING TO HAVE HIM GET BACK INTO HIS VEHICLE AFTER RECOGNIZING HIM. THIS STATEMENT WAS TYPED FOR ME BY DETECTIVE DANIEL STRASH OF THE KENOSHA POLICE DEPARTMENT AND IS A TRUE AND ACCURATE ACCOUNT OF WHAT OCCURRED.

Witness:

Det. D. A. Al

Date:

11-09-04

RECORDS BUREAU

Signed:

PO Strash

40

KPD - Cert 00094

KENOSHA POLICE DEPARTMENT

Statement

DATE OF SUPPLEMENT:
11/09/04

DATE & TIME OF INCIDENT:
11/09/04 @ 0211 hours

PAGE NUMBER: CASE NUMBER:
1 of 3 04-156477

NAME: DAVID H KRUEGER #258

DOB: 11-20-57 SEX/RACE: M/W

ADDRESS: 1000-55 ST KENOSHA, WI 53140

TELEPHONE: 605-5235

EMPLOYER:

BUSINESS TELEPHONE:

This statement is being typed for me by Detective Dave Niccolai of the Kenosha Police Department and is a true and accurate account of my statement to him.

I was on the road on routine patrol on Lincoln Rd and 80th ST and I heard an officer on the radio asking for help. I think the Officer was Erich Weidner and he sounded distressed. I knew immediately from the sound of his voice that something was wrong and he needed assistance. I didn't know what kind of call he was on or who he was with at the time. Dispatch got on the radio and said "Any squad in the area of 8300 blk of 14th AV". Another squad said they were going and then I informed dispatch that I was en route. I turned E/B on 80th ST and activated my red and blue emergency lights and siren. I heard an officer say something like, "I need help now" and dispatch asked if I heard that and I told them I was at 80th ST and 17th AV. I continued to 14th AV and turned South on 14 AV and I saw the emergency lights from the squads and I realized that there were two squads there. As I was rolling up in front one of the officers screamed in the radio that they were in the back yard. I informed dispatch that I was on the scene and pulled my squad up and stopped in the middle of the street right next to one of the officers cars. I still didn't know why they were there and nothing caught my attention as I pulled up. I was just trying to find out where the officers were. I didn't know what side of the street they were on and I grabbed my flashlight and went to the West side. I just took a chance because I didn't know where they were. Officer Gonzales pulled up behind me with his siren going. I motioned to him with my hand that he should check the East side yards. I ran around the South side of the house at 8310-14th AV and ran to the back yard. I could hear a lady screaming but I don't know if she was saying anything. I still didn't see the officers but I ran in the direction of the lady screaming. There were two ladies standing at the base of the stairs of the deck attached to the house. They were looking towards the garage in between a parked car and a trailer with Wave Runners on it, in the driveway. I still couldn't see the officers until I ran up to the ladies. When I got up by the trailer I saw PO's Strausbaugh and Weidner wrestling with a guy on the ground. They looked like they were doing all they could do to just hold on to him. I didn't see any punches or knee strikes and it looked like they were exhausted. I told the ladies to stay back because they were hysterical and I feared they would interfere with the officers. One of the ladies was screaming something about the guy being her son. One of the

I have made the above statement without any threats or promises. It is my desire to state the true facts as to this incident. I have read the above statement and find it is true and correct.

Witness:

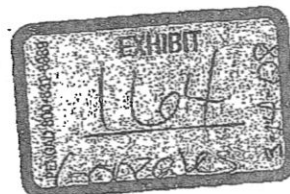
Det. D. A. 258

Signed: *D. H. Krueger*

Date: 11-9-04

RECORDS BUREAU

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KENOSHA POLICE DEPARTMENT

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DATE OF SUPPLEMENT:

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Two officers yelled to me that they couldn't get him cuffed and for me to "Taze him". I took my Tazer (#5, serial #X00-045820) out and removed the cartridge from the front. The guy they were fighting with started to stand up with both officers still having their hands on him. The guy's shirt was pulled up and his ribs and stomach were exposed. I gave the guy a "Drive stun", Tazing him in the ribs as he was standing up. He continued getting up and started moving in a NW direction towards the garage. When he got up the Tazer broke contact with him so I reholstered my Tazer and grabbed him in a "Bear hug". I could smell an odor of an alcoholic beverage on his breath when I grabbed him. I was behind him and had him around his shoulders but he was still able to move his arms. He was trying to get away and I heard Strausbaugh scream something like "he has my gun" or "He's got his hand on my gun". Weidner was also yelling at this time but I don't know what he said. I pinned him against the left front fender of the car and his arms were still free. Strausbaugh was to my right and screamed in a high pitched, desperate voice, "He's got my gun, he's got my gun." I had the guy in a bear hug with my head turned to the left. I couldn't see Weidner and I knew Strausbaugh was on my right but I couldn't see what he was doing. While fighting with the guy on the fender I looked up and saw Gonzales standing at the front of the car. I'm not sure where he came from. When Strausbaugh screamed that the guy had his gun, I yelled "If he's got your gun, we're gonna have to shoot him." While I was yelling this Gonzales drew his gun from his holster and put it to the side of the guy's head. Gonzales yelled, "Does he have your gun?" and Strausbaugh yelled in a high pitched voice, "He's got my gun." While this was all going on I expected to hear a gun shot and one of us was going to get shot. I only had the guy around the shoulders and I couldn't control his arms and I had no idea where his arms were at or if he had Strausbaugh's gun. The guy was trying to push away from the car and I was just trying to hold on to him. With Strausbaugh yelling, "He's got my gun," I thought the guy was going to shoot one of us so I told Gonzales to shoot the guy. Gonzales had his gun pressing against the side of the guy's head and he pulled the trigger. The gun didn't fire and I was wondering why it didn't go off and then I saw Gonzales back his gun away slightly from the guy's head and then the gun went off. It was almost simultaneously from when I told Gonzales to shoot to when he discharged his gun. The guy was bent over the front of the car and I was still behind him but in more of an upright position. Gonzales was positioned so his weapon would be discharged away from the officers and toward the windshield of the car we were against. As soon as he fired the guy stopped resisting and slumped over the hood of the car. I held him up with my right hand and I could see he was bleeding profusely from his head. I grabbed my radio with my left hand and I called dispatched and said that I needed rescue here right away. Then I called operations and informed them to notify Capt. Berner that we had an officer involved shooting. I checked with the other officers and made sure everyone else was OK. Strausbaugh and Gonzales both said they were OK and I don't remember seeing Weidner. From the time I arrived on the scene until rescue was called was about two minutes. Shortly after this PO Beller arrived. Beller climbed the fence to the North to assist. PO's DeJonge and DeMario arrived and I told them to take the

I have made the above statement without any threats or promises. It is my desire to state the true facts as to this incident. I have read the above statement and find it is true and correct.

Witness:

Det. [Signature] 254

Signed: *Lt. Kueger*

Date: *11-9-04*

RECORDS BUREAU

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KENOSHA POLICE DEPARTMENT

Statement

DATE OF SUPPLEMENT:

11/09/04

DATE & TIME OF INCIDENT:

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two ladies in the house and stay with them. I held the guy against the car and then slowly lowered him to the ground. I laid him down on his side with his face down. He was still breathing because I could see his chest moving but his breathing was very labored. He was gurgling and snorting while he was on the ground. I could hear the sirens from the rescue squad approaching and I monitored the guy until rescue arrived. DeJonge came back outside and I told him to secure the scene. PO Metzler arrived and helped secure the scene. Rescue arrived and started attending to him. I heard one of the paramedics say "He's down to 60" and then "He's back up to 100." They placed him on a stretcher and put him in the ambulance. They worked on him for several minutes at the scene and then transported him to KMH. I sent Strausbaugh and Gonzales back to the PSB. Sgt. Maccari was on the scene and took control of the scene. I stayed on the scene until DA Jambois, AC Pataska and Capt. Berner arrived and I informed them of the situation. Then I cleared the scene and came to the Detective Bureau. While in the Detective Bureau I discovered that my Tazer holster was broken. The holster was in proper working condition at the start of my shift and must have been damaged during the struggle.

I have made the above statement without any threats or promises. It is my desire to state the true facts as to this incident. I have read the above statement and find it is true and correct.

Witness:

Det. D. O'Neil

Signed: *Lt. Krueger*

Date: 11-9-04

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KENOSHA POLICE DEPARTMENT

Supplementary Report

DATE OF SUPPLEMENT: 11/11/2004	DATE & TIME OF INCIDENT: 11/09/04 @ 0211 hours	PAGE NUMBER: 1 of 5	CASE NUMBER: 04-156477
REPORTING OFFICER: Officer Involved Shooting/Death Investigation	Captain Randall P. Berner #218		

COMPLAINANT: NAME:	DOB:	SEX/RACE:
ADDRESS:	TELEPHONE:	

SUSPECT/DECEASED: NAME: MICHAEL E. BELL	DOB: 03/03/1983	SEX/RACE: M/W
ADDRESS: 8310-14 TH AVE. KENOSHA, WI 53143	TELEPHONE: 262-658-1219	

WITNESS: NAME: KIM M. BELL	DOB: 09/30/1958	SEX/RACE: F/W
ADDRESS: 8310-14 TH AVE., KENOSHA, WI 53143	TELEPHONE: 262-658-1219	

WITNESS: NAME: SHANTEA M. BELL	DOB: 05/15/1979	SEX/RACE: F/W
ADDRESS: 8310-14 TH AVE. KENOSHA, WI 53143	TELEPHONE: 262-658-1219	

On 11/09/04 @ 0217 hours I was called at home by Sgt. Bartholomew who informed me that there had been a shooting involving a police officer. Sgt. Bartholomew had little additional information to give me other than the incident location, 8310-14th Ave. I disconnected and then called Sgt. Bartholomew back at 0222 hours and he informed me that P.O. Gonzales had discharged his duty weapon. Other officers present at the time were P.O. Strausbaugh, P.O. Weidner, and Lt. Krueger (on-scene supervisor). I was also told there were 2 female witnesses. I advised Sgt. Bartholomew that I would contact District Attorney Jambois.

At about 0225 hours I phoned Lt. Vieth at his residence and directed him to report for duty as supervisor in charge of the follow-up investigation regarding this case. Lt. Vieth informed me that he would report directly to the scene. I called DA Jambois and left a message on his cell phone voice mail. (While in route to the scene I called Sgt. Bartholomew and asked him call DA Jambois again for me).

I responded to the scene arriving approximately 0258 hrs. I observed the dwelling at 8310-8312 14th Ave., was cordoned off with crime scene tape as was the 8300 block of 14th Ave. I met with A/C Pataska, Sgt. Maccari, Lt. Krueger, Lt. Vieth and P.O. Belier. I was advised that P.O. Gonzales had discharged his duty weapon (single shot) at a W/M individual who had grabbed hold of P.O. Strausbaugh's duty weapon. No other officers at the scene when the shot was fired discharged their weapons. The suspect/victim, later identified to me as Michael E. Bell, suffered a gunshot wound to the

Reporting Officer:

2nd Officer:

Supervisor:

Capt. R. Berner #218



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KENOSHA POLICE DEPARTMENT

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REPORTING OFFICER:

Captain Randall P. Berner #218

TYPE OF INCIDENT:

Officer Involved Shooting/Death Investigation

head and was transported from the scene by KFD rescue. I was told this incident was witnessed by the mother and sister of Michael Bell. Two of the officers involved in this incident, Gonzales and Strausbaugh had cleared the scene prior to my arrival.

At the direction of Sgt. Maccari, P.O. Beller walked me through the sequence of events leading up to the shooting. In summary, P.O. Beller stated that P.O.'s Strausbaugh and Weidner had been involved in a routine unrelated traffic stop several blocks north of 8310-14th Ave., near the McDonald's restaurant, when a SUV drove by them SB on 14th Ave., at an excessive rate of speed. P.O. Strausbaugh, followed by P.O. Weidner initiated a traffic stop on the SUV in front of 8310/12 - 14th Ave. The driver, later identified as Michael Bell, became combative with P.O. Strausbaugh who suspected Bell was operating under the influence. P.O. Strausbaugh attempted to run Bell through standard field sobriety tests on the sidewalk. Bell became more uncooperative and then fled on foot NW towards the NE corner of 8310-14th Ave. P.O. Strausbaugh and Weidner managed to grab on to Bell on the lawn in front of 8312 and a physical confrontation ensued. Attempts to cuff Bell were unsuccessful. P.O. Strausbaugh deployed his Taser into the back of Bell; however, the Taser was ineffective in disabling Bell. Bell ran towards the driveway at 8310 and turned WB up the driveway, running into the side of a car in the process. P.O. Strausbaugh ran after Bell with his Taser unit probes still attached to Bell. P.O. Strausbaugh caught Bell between the north side of 8310 and a vehicle parked in the driveway. Another physical confrontation occurred. I observed a Taser unit on the concrete driveway and was told it belonged to P.O. Strausbaugh. Bell broke free and continued WB towards the detached garage beyond the rear of 8310/12-14th Ave. P.O. Strausbaugh and Weidner engaged Bell again attempting to arrest him. Both officers and Bell went down on the concrete driveway. Bell's Mother and sister exited the rear of 8310 about the same time Lt. Krueger arrived on scene. Lt. Krueger then deployed his Taser (drive stun) to the rib cage area of Bell. Bell was not incapacitated by the Taser and rose off the ground, bull rushing P.O. Strausbaugh into the driver's side — near the drivers door mirror, of another car parked in the driveway (1st vehicle parked east of the garage door — bronze colored Nissan 2dr, WI tags, 888-EYW). P.O. Gonzales now arrived on scene as Lt. Krueger grabbed hold of Bell's backside in a bear hug fashion. As P.O. Strausbaugh and Lt. Krueger attempted to control Bell, P.O. Strausbaugh yelled numerous times that "he has my gun". P.O. Gonzales, reacting to Strausbaugh's repeated cries that Bell has his gun, then shot Bell once in the head. Bell immediately stopped resisting, slumped onto the hood of said car and then onto the driveway.

P.O. Beller pointed towards the concrete driveway several feet south of the driver's door of said vehicle to a .45 cal slug. I also observed blood on the hood of the car directly east of the garage door and blood on the concrete by the front left tire and also below the left front portion of the bumper. I also observed Taser wires on the concrete and a tan colored jacket, presumably belonging to Bell on the concrete near a pair of Wave Runners (on trailer) directly south of the aforementioned car. I also observed that the area where the shooting occurred is illuminated by twin flood lamps activated by a motion sensor.

Lt. Krueger told me that during the struggle with Bell, Strausbaugh screamed out several times in a desperate voice, "he has my gun". Lt. Krueger told me yelled out, "if he has your gun, we're going to

Reporting Officer:

2nd Officer:

Supervisor:

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Capt Berner #218

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REPORTING OFFICER:

Captain Randall P. Berner #218

TYPE OF INCIDENT:

Officer Involved Shooting/Death Investigation

have to shoot him". Lt. Krueger further told me that upon seeing P.O. Gonzales deploy his service weapon at the head of Bell, along with the continued screams of P.O. Strausbaugh that Bell has his gun, Lt. Krueger told P.O. Gonzales to shoot. Lt. Krueger told me that P.O. Gonzales then shot Bell. Lt. Krueger stated to me that he was never in a position to observe P.O. Strausbaugh's gun or Bell's hands. Additionally, Lt. Krueger told me he knew he was going to hear a gun shot, he just didn't know if the shot would come from P.O. Strausbaugh's gun being fired by Bell, or one of the other officers on scene.

P.O. Beller also told me that he did not witness the confrontation, or the shooting, but he heard the shot as he was approaching the scene on foot from the yard directly north of 8310-14th Ave. A fence, approx. 7 feet high separates these properties.

I contacted Sgt. Bartholomew and directed him to call P.O. Thorne, KPD criminalist, into work and have him report to the scene. At approximately 0320 hours DA Jambois arrived on scene and was briefed on this incident, including a walk through of the scene conducted by P.O. Beller.

A short time later I cleared the scene and responded to Kenosha Memorial Hospital emergency room. While in route I contacted Lt. Fonk and advised her to mobilize her Critical Incident Support Team and report to the KPD. DA Jambois arrived at the hospital a couple minutes before me. At the hospital I observed Bell being attended to by ER staff. I was advised Bell was on life support and that he was being readied for transport to Froedtert Hospital in Milwaukee. The attending ER physician was Dr. Charles Longdon. He indicated Michael Bell's condition was very critical.

At about 0415 I was advised that Kim Bell and Shantea Bell were at the hospital in a waiting room. DA Jambois, Lt. Vieth and I met with Kim and Shantea. Also present was a volunteer member of the Clergy, later identified as Brian Henry. I offered the Bell family my sincere sympathies over this tragic incident. DA Jambois then asked them to describe what they saw. Mrs. Bell said that she was awoken by loud noises outside her home. Mrs. Bell said she observed her son Michael, involved in a struggle with two individuals. Mrs. Bell said she initially did not recognize the two individuals were police officers. She tried to help her son and then realized the individuals her son was fighting with were police officers. She said one of the police officers warned her not to intervene or she would be arrested. She said one officer put his hand on her and directed her away from the fight. Mrs. Bell said she told the police not to hurt her son. Mrs. Bell said she heard an officer yell, "He's got my gun".

Shantea Bell, while talking on a cell phone, listened to her mother as she briefly described what she saw and she agreed with her mother's comments. However, Shantea said she heard an officer shout "he's going for my gun". Both Shantea and her mother were quite emotional and we did not continue with any further questioning. Shortly thereafter, Mrs. Bell and Shantea left KMH in route to Froedtert Hospital.

I returned to the ER nurses station and asked Dr. Langdon to run an alcohol and drug screen on blood and urine from Michael Bell. Dr. Langdon said he would order said tests and preserve any remaining blood and urine samples.

Reporting Officer:

2nd Officer:

Supervisor:

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Capt. Berner 218

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TYPE OF INCIDENT: Officer Involved Shooting/Death Investigation

I then cleared KMH and returned to the KPD. At the KPD I met with Lt. Krueger, P.O. Gonzales, P.O. Weidner and P.O. Strausbaugh. I informed them that they will each have a detective assigned to them who will then interview them and obtain a written statement. I also directed each officer not to discuss this matter amongst each other. Furthermore, I advised them they once they were allowed to leave (off-duty) they would be placed on Administrative leave for a period of time designated by the Asst. Chief of Police.

I was later advised that Michael Bell had died at Froedtert Hospital. Dr. Severson pronounced him deceased at 0449 hours, 11/09/04. Deputy Kenosha Co. M.E. Rick Berg was in route to take possession of Michael Bell and transport him to the Waukesha Co. Medical Examiners Office for further proceedings relative to this investigation.

I then directed Detectives Salas, Strash, Niccolai and Walton to transport the officer/supervisor they interviewed back to the scene — independent of each other and have the officer/supervisor re-enact their involvement from the moment they originally arrived on scene.

At approximately 0933 hours I returned to 8310-14th Ave with Capt. Genthner. A short time later (1001) we began the walk through. The order of re-enactment was based on the order each officer originally arrived on scene. P.O. Strausbaugh along with Det. Strash, re-enacted his activities, what he saw, heard, and felt regarding this incident. Capt. Genthner, Lt. Vieth, Criminalist Thorne and I witnessed said re-enactment. At the conclusion, P.O. Strausbaugh's position at the time the shot was fired was marked on the concrete driveway with a numbered placard identified to P.O. Strausbaugh and which was subsequently photographed by Criminalist Thorne. Also present during portions of the walk through were P.O. Sobbe and P.O. Laudonio, who were present to preserve the integrity of the crime scene. Det. Strash then transported P.O. Strausbaugh from the scene.

The next officer was P.O. Weidner, escorted by Det. Walton. P.O. Weidner re-enacted his activities in the same fashion as above. The witnesses remained the same as were the officers assigned to scene security. His position at the time of the shooting was marked with a numbered placard and photographed. Det. Walton then transported P.O. Weidner from the scene.

The next officer was Lt. Krueger, assisted by Det. Niccolai. Again, following the same protocol as above, Lt. Krueger re-enacted his activities during this incident. His position at the time of the shooting was marked with a numbered placard and photographed. Det. Niccolai then transported Lt. Krueger from the scene.

The final officer to re-enact his activities was P.O. Gonzales, assisted by Det. Salas. As above, P.O. Gonzales detailed his activities, including describing all of his sensory observations during this incident. Again, his final position at the time of the shooting was marked with a placard and photographed. Det. Salas transported P.O. Gonzales from the scene.

Reporting Officer:

2nd Officer:

Supervisor:

Capt. Berner 218

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TYPE OF INCIDENT:	Officer Involved Shooting/Death Investigation		

It should be noted that unidentified Bell family members/friends were observing our re-enactment from a second story window.

After observing all four officers conduct their re-enactment, I found each to be consistent with their statement provided earlier to Detective's.

After returning to the KPD I directed the four involved officers to end their tour of duty.

On 11/11/04 an autopsy was conducted on Michael Bell. Det. Niccolai and Criminalist Thorne were present for said autopsy.

See other investigating officers reports for additional details/information.

Investigation to continue.....

End of report.

Reporting Officer:

2nd Officer:

Supervisor:

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Capt. Berner 218

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RECORDS BUREAU

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**KPPA Board of Directors Special Meeting
December 19th 2011
1800-2010 hours**

1. Calling of the Roll

- Lampada, Kendall, Strelow, Beller, O. Johnson, Torres, Correa, DeJonge, Deates, Alfredson, Ret. Kessler, Ret. Mutchler & Attorney Tim Hawks were present.
- Dumesic was excused.

2. Acceptance of the last minutes of the last meeting.

- Lampada motioned to accept the Nov. 17th meeting minutes, 2nd by Torres, Strelow noted that discussion on Political Action Committee, discussion on a third shift representation for the BOD and how to implement that, discussion on the Safety Committees proposal by Miller, and discussion on the Community Resource Officer position implemented by the City of Kenosha were additional topics on Dec 15th, 2011 (however there was no resolution or motions made), all were in favor. **Motion Passed**

3. New Membership- none

4. Resignations- none

- The KPPA BOD's wishes Assistant Chief Brydges a long and happy retirement, thanks for your service Boss!

5. Committee Reports-

- Death Benefits Committee (Kendall) -
 - was used to purchase gifts. Strelow is maintaining an account Strelow was added to the committee. Strelow reported that a percentage of money collected at the fall meeting on behalf of Erich Strausbaugh's children with the balance of the money, the book is available on request.
 - Dreux Beaulier casket flag was stolen or lost at the church immediately following his funeral. Kendall motioned to purchase a new flag and boarder, and present it to the family at a suitable meeting, Lampada 2nd, all were in favor. **Motion passed**
- Awards committee (Correa) - This committee is now the sole responsibility of Vicente Correa, Correa will bring all nominations to the BOD for consideration at each monthly meeting.
 - Correa recognized DeJonge and Beller for their efforts making the recent Christmas Party and Shop-with-a-Cop excellent events at reasonable price.
- Ethics Committee (Torres) - Nothing New
- Policy and Procedure Committee (O. Johnson) - Nothing New
- Scholarship Committee (Torres) - Torres reports that scholarship applications will be available in February.
- Wellness/Insurance Committees (Deates) - See Old Business.
- By-Laws Committee (DeJonge) - Hecker, O. Johnson and Strelow volunteered for this committee. Lampada selected O. Johnson.

- While on administrative leave and as a member in good standing, Russ Beckman officially request his fair share payout for his pending retirement, funding for a memorial brick, and retirement badge.
 - The fair share payout and memorial brick are documented in the KPPA Bi-Laws and the funds will be granted by the KPPA. **Request granted**
 - Beller motioned to deny Beckman's request to have a retirement badge purchased by the KPPA, 2nd by Alfredson, after discussion Deates, Kendall, DeJonge, and Correa affirmed the motion while Strelow and O. Johnson opposed the motion (Torres & Dumesic were not present for the vote and Lampada abstained). **Motion passed (6-2), badge request denied.**
- Mark Your Calendars:
 - Summer pool Party - Deates will organize
 - Spring Meeting - Alfredson will organize
 - MDA Police/Fire Softball Game - Strelow and Shaper will organize
 - KPPA Show Fund - will be discussed
 - Fall Meeting - Alfredson will organize
 - Christmas Party - Dan DeJonge
 - Other events will be added throughout the year

9. Money requests -

- The Kenosha Rotary Foundation requested a monetary donation to their general fund. Alfredson motioned to give them \$500, 2nd by Correa, in discussion the BOD recognized the Rotary's continued support of the KPPA, all were in favor. **Motion Passed**
- Kendall motioned to provide Jack Decker with a \$599 dollar donation to assist with medical bills, 2nd by Alfredson, in discussion Kendall explained out tax ramifications for higher donations, all were in favor. **Motion Passed**
- Dusty Nichols, on behalf of the KPPA honor guard, requested \$1500 to supplement a 6 member crew to represent the KPPA and City of Kenosha at the Washington DC National Law Enforcement Memorial in May 2012. Alfredson motioned to provide the \$1500 from the honor guard account, 2nd by Strelow, in discussion we learned that veteran Officers who have continually made themselves available over years of service in the honor guard have been selected to include; Nichols, Rivera, Deschler, Wienke, Shaper, & Witt, all were in favor. **Motion Passed**
- Dusty Nichols has requested a monetary donation for the Honor Flight on behalf of the Rotary Club of Kenosha-West's service project for 2011-2012.
 - Strelow motioned to provide \$250 to assist Nichols/Rotary-West in meeting a goal of raising \$1000 for the Honor Fight Program, 2nd by Kendall, all were in favor. **Motion Passed**

10. Motion to suspend by Kendall, 2nd by Torres, all were in favor.

KPPA Minutes prepared by Secretary Matt Strelow



Franklin Police Department

Incident Report

Date:

10/31/2010

CFS Code-1:

D

Incident Report Number:

10-004577

Incident:

Death Investigation

Incident Report Number:

10-004577

Between: Date - Time

And/At: Date-Time

10/31/10

00:13

Incident Location:

4450 W Central Ave, Franklin, WI, 53132

CFS Code-1:

D

CFS Code-2:

CFS Code-3:

CFS Code-4:

CFS Code-5:

CFS Code-6:

CFS Code-7:

CFS Code-8:

DOA

Name (Last, First, Middle)

Strausbaugh, Erich R

DOB:

06/12/1976

Race/Sex

W/M

Address: (Address, City, State, Zip)

4450 W Central Ave, Franklin, WI, 53132

Home Phone Number

(414) 235-9177

Employer

Work Phone Number

Employer Address

Cell Phone Number

CN

Name (Last, First, Middle)

Strausbaugh, Heather M

DOB:

08/04/1976

Race/Sex

W/F

Address: (Address, City, State, Zip)

4450 W Central Ave, Franklin, WI, 53132

Home Phone Number

(414) 235-9177

Employer

Work Phone Number

Employer Address

Cell Phone Number

(414) 628-2112

SUMMARY

On Sunday, 10/31/10, at 0013 hours, Heather M STRAUSBAUGH, F/W, 08/04/76, reported her husband Erich R STRAUSBAUGH, M/W, 06/12/76, had shot himself in the head. This occurred at 4450 West Central Avenue, Franklin, Wisconsin, 53132. At approximately 0204 hours, Erich was pronounced deceased by the Milwaukee County Medical Examiner.

See Supplemental Reports for detail.

Vehicle Information: (Year, Make, Model, Style, Color)

License Number:

State:

Expiration Year:

Vin:

Insurance Company:

Other Vehicle Information:

NCIC#

Reporting Officer(s):

Luling, Garrett J.

Payroll Number:

0784

Payroll Number:

Report Date:

10/31/2010

Time Received:

00:13

Time Cleared:

02:50

Unit(s) Assigned:

67, 341, 342, 345, 348

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Reviewed by:

Goens, Curtis A.

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10-004577

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Incident Date:

10/31/2010

NAMES

Contact-1

Williams, Gene E W/M-65 of 933 West Highland Ave, Milwaukee, WI, 53233
DOB: 05/01/1945
Business Phone: (414) 223-1200

Contact-2

Newsome, David of 8901 W Drexel Ave, Franklin, WI, 53132
Work Phone: (414) 425-1420

Contact-3

Braun, Lance W/M of 8901 W Drexel Av, Franklin, WI, 53132
Work Phone: (414) 425-1420

Contact-4

Day, Marcus A W/M-32 of 8901 W Drexel Ave, Franklin, WI, 53132
DOB: 03/10/1978
Work Phone: (414) 425-1420

Contact-5

Psichilus, Tony of 8901 W Drexel Ave, Franklin, WI, 53132
Work Phone: (414) 425-1420

Contact-6

Hays, Patrick MS W/M-47 of W255S7425 Hi Lo Dr, Waukesha, WI, 53189
DOB: 03/17/1963
Work Phone: (414) 425-1420

OTHER NAMES

Strausbaugh, Erich R of 4450 W Central Ave, Franklin, WI, 53132

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Luling, Garrett J.

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PROPERTY LIST

Seq#	Reason	Make/Model	Description/Serial#	Quan/Value
10-001679	1 SEI		S&W .40 Shell Casing	1 \$1.00 [Recovered]
10-001680	1 SEI	Glock	Glock 22 .40, Black HVS390	1 \$1.00 [Recovered]
10-001681	1 SAF		Winchester 12 guage Shotgun L927904	1 \$1.00 [Recovered]
10-001682	1 SAF		Remington 700 Rifle A6790026	1 \$1.00 [Recovered]
10-001683	1 SAF		Green/Black Kel Tec 9mm ABW92	1 \$1.00 [Recovered]
10-001684	1 SAF		Smith & Wesson .38 Special Revolver K41956	1 \$1.00 [Recovered]
10-001685	1 SEI	T-Mobile	T-Mobile Cellular Phone	1 \$1.00 [Recovered]

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Supplementary Report

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New Incident:	Original CFS Code-1: D	New CFS Code-1: New CFS Code-2

NARRATIVE

INTORDUCTORY STATEMENT

On Sunday, 10/31/10, at approximately 0013 hours, Heather M STRAUSBAUGH, F/W, 08/04/76, reported that her husband, Erich R STRAUSBAUGH, M/W, 06/12/76, had shot himself in the head. This occurred at 4450 West Central Avenue, Franklin, Wisconsin, 53132. Erich was pronounced deceased on Sunday, 10/31/10, at 0204 hours, by the Milwaukee County Medical Examiner.

SOURCE OF ACTIVITY

On Sunday, 10/31/10, at approximately 0013 hours, I was on routine patrol in squad 127 when I was dispatched with Squad 341, PO Mark HERNON to, 4450 West Central Avenue Franklin, for an 911 call, where the caller stated her husband had just shot himself in the head. I observed the following.

CRIME RECONSTRUCTION

I arrived at the scene at approximately 0018 hours, I observed Heather, dressed in a white t-shirt and shorts crouched on the stoop of the residence. As I approached Heather, she was crying hysterically and could barely answer my questions. When Heather initially tried to speak, she dry heaved as if she was going to vomit. I asked heather where her husband was, if he still had the gun, and what condition he was in. Through heavy sobs, Heather stated that her husband was a Kenosha Police Officer, and that he had put his pistol in his mouth and shot himself. Heather stated that the pistol was still with her husband in the back bedroom of the residence. At that point Squad 348, PO Jason FINCEL arrived on scene. Together we entered the residence.

The residence is a two story house with the front door facing north. As PO FINCEL and I entered the residence, the living room was directly to our the left/east. Directly to the right/west was a dinning room. Straight ahead led into the kitchen. PO FINCEL and I proceeded to clear the living and dining room before entering the kitchen. We then entered the kitchen area, it was at this time that I recognized the odor of a recently fired weapon. The kitchen of the residence bent to the right. The kitchen then led to a short hallway. This hallway led to the master bedroom, /downstairs bathroom, stairs to the upper story, and laundry room. Standing in the kitchen and facing west towards the master bedroom I could see Erich laying

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almost in the door way. As PO FINCEL and I approached the master bedroom, I observed Erich laying face up between the bed and the door. In the bedroom, the bed was in the middle of the room with the head board facing south. To each side of the bed was a nightstand. The far west wall had a full sized dresser along it. In the northwest corner there was a dresser with a television on top of it. The north wall connected to the master bathroom, which had a toilet to the right and a shower to the left. The north wall also had another dresser against it. Along the east wall was the entrance to the room as well as a walk in closet. Erich's head was facing towards the north east corner. Erich was wearing nothing but a pair of white boxer shorts. Erich's right leg was slightly pulled back while his left leg was almost fully straightened. Erich's arms were at his side with the palms facing upward and in towards the body. Between Erich's right arm and right thigh was a black Glock 22. The barrel of the pistol was facing towards his feet. Erich's head was slightly turned to his right, with his right ear to the floor. Blood and brain matter were pooling at the rear of Erich's skull. Blood was also trickling out of Erich's nose and mouth.

PO FINCEL entered the laundry room which led to the basement. PO FINCEL cleared the basement. I approached Erich to check for a pulse. At this time, PO HERNON arrived, entered, and cleared the second story of the residence. I crouched down beside Erich and placed my right hand on his left shoulder. Erich's body was still warm to the touch. I lightly shook Erich to see if he made any response. There was none. I then checked Erich's pulse on both his neck and his left wrist. Again, I could not feel a pulse. At that point I secured the firearm laying between Erich's arm and leg. I removed the magazine as well as the live round still in the chamber. The slide of the firearm was still slightly warm from being fired. I then counted 12 rounds in the magazine and one in the chamber. The Glock 22 has a capacity of 15 rounds in the magazine and one in the chamber. At this time the Franklin Fire Department arrived on scene.

FFD entered the residence to evaluate Erich. They checked for a pulse. A member of the FFD claimed to have found a weak pulse and started chest compressions. Erich's body was moved for easier access to perform compressions. After a brief period of time FFD stopped with compressions. FFD collected all the information they needed and I signed the computer stating they would not be removing the body. I then called the Milwaukee County Medical Examiner. I relayed the needed information to the Examiner. FFD then left the scene. I then returned to my squad to retrieve a camera. I returned to the residence and took multiple photographs of the residence, body, and scene. After taking photographs, Sergeant Curtis

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GOENS, PO HERNON, and I searched the residence removing all necessary evidence and firearms for safekeeping.

The medical examiner, Gene E WILLIAMS, M/W, 05/01/45, arrived and pronounced Erich as deceased at 0204 hours. At approximately 0229 hours, Erich's body was removed and turned over to the Milwaukee County Medical Examiner.

PHYSICAL EVIDENCE AND WHERE FOUND

The first piece of evidence taken was the .40 caliber Glock 22. I found this pistol between Erich's right arm and right thigh. The next piece of evidence taken was a single silver .40 caliber S&W shell casing. The casing was found between the mattress and wooden frame of the bed. The shell was on the east side of the bed toward the closet and entrance. The next piece of property taken was a green and black Kel Tec 9mm pistol. This pistol was found in the nightstand on the west side of the bed. In the closet there was one Remington 700 rifle and one Winchester 12 gauge shot gun. Both were removed and taken from the house. There was also a Smith and Wesson .38 special revolver removed from the upper shelf in the closet. Lastly, Erich's cell phone was taken from the west side night stand. All items were placed on property inventory. All items were recovered by myself and remained in my custody until placed on property inventory.

DISPOSTION OF PHYSICAL EVIDENCE

The evidence taken was placed on property inventory and stored in lockers #4 and 10. Digital photographs were taken of the scene, copied, and placed in the photograph collection box.

LIST OF PROPERTY TAKEN

- 1 Black, Glock 22, .40 caliber - Serial # HVS390
- 1 S&W .40 caliber, spent casing
- 13 S&W .40 caliber rounds
- 1 green and black 9mm Kel Tec pistol - Serial # ABW92
- 1 Smith & Wesson .38 special revolver - Serial # K41956
- 1 Winchester 12 gauge shotgun - Serial # L927904
- 1 Remington 700 rifle - Serial # A6769026
- 1 T-Mobile cellular phone

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INJURIES/DAMAGE

N/A

SUMMARY OF OTHER DETAILS

For more information see other Supplemental Reports for details.

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Supplementary Report

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New Incident:	Original CFS Code-1: D	New CFS Code-1: New CFS Code-2

NARRATIVE

On Sunday, 10/31/10, at approximately 0013 hours, **HEATHER M STRAUSBAUGH, F/W, DOB: 08/04/76**, reported her husband, **ERICH R STRAUSBAUGH, M/W, DOB: 06/12/76**, had shot himself in the head. This occurred at their residence at 4450 West Central Avenue, Franklin, Wisconsin, 53132. At approximately 0204 hours, Erich was pronounced deceased by Milwaukee County Medical Examiner, **GENE E WILLIAMS, M/W, DOB: 05/01/45**.

On Sunday, 10/31/10, at approximately 0013 hours, I responded, as the On Duty Supervisor, to 4450 West Central Avenue, for the report of a subject who had shot himself. Upon arrival on the scene, I met the wife, Heather, who was sitting on the front walkway of the residence with her knees up to her chest with her head between her knees and her arms grasping around her legs. Heather was screaming and crying uncontrollably. She was also breathing heavily to the point of almost hyperventilating. When I made contact with Heather, I asked her what had happened. She said that her husband put the gun in his mouth and shot himself. Heather then said that she knew he was dead. Heather continued to scream and cry uncontrollably while remaining in the earlier described seated position. While she was crying, she stated she was feeling sick and thought that she was going to throw up. Heather also stated that she witnessed the whole incident and said that Erich shot himself in front of her. Heather continued to be in a hysterical state for approximately 10-15 minutes.

Once Heather calmed down, I asked her what happened that evening and she said that her and Erich went to a Halloween party with Erich's work friends. She stated they had a good night together and there were no problems. Heather said that they've been having marital problems and that this was the first day in a long time that they got along and she stated "It was a very good day." Heather said they were getting along and they weren't fighting and they were enjoying each other's company. Heather stated on the way home that they tried to contact some other friends to meet them out at a local bar before going home but were unable to get a hold of anybody. Heather said that they decided that they would just come home and lay in bed and watch TV together. Heather said they left the party in Kenosha area at approximately 11:00pm on 10/30/10, and arrived home at approximately 11:30pm. She said that they got into bed and Erich lit some candles in the room and they began laying with each other, enjoying each other's company watching TV. Heather said that Erich then wanted to have sex with her and she stated that she did not want to have sex. She told him she just wanted to lay with him and enjoy being with him. Heather said that Erich then questioned if she still loved him and told her how much he loved her. He said that he could not live without her. Heather stated she told him that she loved him but that his past hurtful comments made to her in front of their two children still bother her. She said she had to work through these feelings before she wanted to become intimate with him again. I asked if this turned into an argument and Heather said that it did not and it was discussion. She said it didn't turn into a fight like in the past and stayed a discussion. Heather said that through this discussion Erich got up and began packing up clothes. She said she questioned him where he was going to go. She then said that he got back into bed and layed by

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her. Heather then said that Erich stood up and grabbed his handgun off the nightstand and walked around the bed to her side of the bed and stated, "yeah, yeah, I hurt you, I hurt you so bad?" Heather said that Erich then put his handgun into his mouth and pulled the trigger. Heather said that during this time she was laying on her side with her head on the pillow facing the outside of the bed and didn't think that he was going to pull the trigger. Heather said she might have told him, "take the gun out of your mouth". Heather said he then pulled the trigger and shot himself. Heather said that it happened extremely fast and she doesn't know why he did it.

I asked if Erich was left or right handed and she said he was right handed. I asked Heather if he saw him pull the trigger and she said she didn't think so. Heather said that once he had shot himself and he had fallen to the floor she doesn't remember how she stepped over him or got around him but she ran out to the kitchen and dialed 911 immediately. She said that she knew he was dead right away. The bedroom is on the west side of the residence on the 1st floor, main level. There's a short hallway leading from the kitchen to their bedroom. When you enter the bedroom, their bed is on the south wall which is on the left side of the room when you enter. Heather said she was lying on the left side of the bed and Erich's was lying on the right side of the bed. There were no signs of a struggle or fight within the entire residence. I asked Heather how many shots were fired and she said one shot into his mouth. One casing was located on the scene.

I contacted Heather's friend, AIDA L GRULKOWSKI, F/W, DOB: 04/04/77, by telephone. I had GRULKOWSKI come to the scene to assist with consoling Heather and providing her a place to go. I asked Heather where her children were. Heather's said that one child was staying next door for a sleepover and the other child was staying with her mother, since they had a party that evening. Heather was then taken to GRULKOWSKI's residence accompanied by Franklin Police Department Chaplain JONATHAN MISIRIAN, at 4540 West Hunting Park Drive, Franklin.

Once the body was turned over to the Medical Examiner, I responded to GRULKOWSKI'S residence to re-interview Heather. Heather repeated her story and it was consistent with her initial statements were to me on scene. She went further to say that they've been having trouble with their marriage for some time. Heather said that they have not been getting along for a while and stated that after her husband was involved in a Officer involved shooting in 2004 (MICHAEL E BELL case), which had gotten a lot of publicity that he changed as a person. Heather stated she blames the BELL'S for all of her marriage problems and for this occurring as she said that Erich changed which ultimately had a detrimental effect on her marriage. Heather said that on Tuesday 10/26/10, they sought help through the Employee Assistance Program (EAP) to seek counseling for their marriage. Heather said that they've been talking for some time about getting a divorce but were concerned for their children. Heather said that they wanted to try counseling to see if they could repair the marriage. Heather said that after the first counseling session, the counselor stated that they would need numerous counseling sessions to work through their problems and that they were planning on attending individually as well as a couple in the future. Heather said that Erich was upset that they couldn't get the second counseling session at an earlier date as they weren't able to get it scheduled until mid November. I asked Heather if Erich has

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been displaying any kind of suicidal tendencies and she said that years back he put a gun in his mouth when they were arguing. I asked if he did that recently and if that was a common thing that he would do and she said "no". She said he only did it once before this incident. Heather said that recently he made comments stating "I feel like I'm going to lose it".

Heather said that evening they concentrated on being together at the party. She said that they had a great time together, and enjoyed getting photos taken with each other by his friends. She said that on the way home Erich was talking about going for a promotion to Detective. She said that he expressed concern that he did not have a Bachelor's Degree and wish he went to college to attain a degree. Heather said at the party he was speaking to friends about the promotion and a fellow Officer said that he would get the position. Heather said that he is a smart person and that the department knows what kind of person he is and that he would be promoted.

At the end of the interview, she again said she can't believe that he did this as the evening was so good. I asked Heather if he ever threatened to take his life in the past and she said he had not.

I returned to the police department to contact the Kenosha Police Department to advise them of the situation. When I arrived at the police department, I received a call from LT CHARLES HANNES at approximately 0440 hours of the Kenosha Police Department. LT HANNES stated that they have already received a call from Erich's parents stating what had happened and making allegations that they believed that Heather had shot their son Erich. LT HANNES told me he was going to contact CHIEF JOHN MORRISSEY of the Kenosha Police Department and advise him of the situation. At approximately 0500 hours, I received a call from Chief MORRISSEY and told him of the situation. Chief MORRISSEY stated that he didn't believe that there was any need for his department to respond to the scene or our police department regarding the investigation. Chief MORRISSEY did state that if he had any information for us that he would get in contact with me.

At approximately 0735 hours, I was contacted by Chief MORRISSEY who stated he had Erich's partner with him, AARON J DILLHOFF, M/W, DOB: 10/16/80. Chief MORRISSEY stated that DILLHOFF had information and that he wanted to speak with me.

DILLHOFF said that Erich had caught Heather cheating on him on 10/17/10. DILLHOFF said he found out this information when working with Erich as they would often talk about their personal lives with each other being partners. DILLHOFF said that Erich told him that on the 17th Heather did not come home and he went out looking for her. DILLHOFF said that he located Heather in their truck, parked at The Bowery Bar, which is located at 3023 West Ryan Road in Franklin. He said that he saw that the truck was occupied and stayed at a distance and just watched what was occurring in the vehicle. DILLHOFF said that Erich confronted a male subject who exited the vehicle, who he said was a twenty four year old personal trainer from Innovative Fitness in Franklin. He said when Erich pulled up and confronted him, Heather sped out of the lot and fled the area. Erich said he began to have a physical confrontation with the twenty four year old. DILLHOFF said that

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Erich then realized that he should not be involved in a physical confrontation realizing the consequences it would have on his job and let the subject go and left the scene.

DILLHOFF also stated that they've had numerous conversations about their marriage and how it was struggling. Erich told DILLHOFF that he has to save his marriage and that he can't be away from his kids. DILLHOFF also stated that Erich was concerned about their financial situation as Heather was not contributing to any kind of retirement program at her work at Wheaton Franciscan Hospital in Franklin. I then asked DILLHOFF if Erich ever seemed depressed or expressed any kind of suicidal tendencies to him. DILLHOFF said that Erich never made any suicidal comments. I asked DILLHOFF if he believed Erich had any issues with the shooting incident he was involved in and the publicity that it has gotten along with the 1.75 million dollar settlement. DILLHOFF said it was not an issue and said that he was over that and has moved on. I asked DILLHOFF if he attended the party that evening and he said that he did not attend the party as he could not find a babysitter. DILLHOFF said that even though he was not at the party, that he heard that they were not fighting last night. DILLHOFF said that at past parties they have gotten into fights. DILLHOFF stated that Erich and Heather attended a party approximately a month ago where they got into a fight, which led to Erich getting locked out of their residence. DILLHOFF said that Erich slept in the garage for the night. DILLHOFF also said that their marriage has been struggling for many years, and in years past he knows that they have gotten into fights where pool balls have been thrown at him and he was hit with a frying pan. I asked DILLHOFF if Erich ever said that Heather ever made any threats on his life and DILLHOFF said she never made any threats on his life or towards him. DILLHOFF said that he can't believe that Erich would have committed suicide and killed himself based on his love for his children. DILLHOFF said that's all he would talk about and how he wanted to save his marriage. DILLHOFF then provided me two names who were also friends with Erich which were TOM GRULKOWSKI, who is Aida's husband, and MIKE HOOD. He could not provide me with any further information regarding numbers and addresses.

For more information regarding this incident see other supplementary reports.

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New Incident:	Original CFS Code-1: D	New CFS Code-1: New CFS Code-2

NARRATIVE

On Monday 11-01-10 at approximately 0905 hours I attended the autopsy of Erich R Strausbaugh at the Milwaukee County Medical Examiners Office. The autopsy was performed by Dr. Christopher Poulos. Prior to the autopsy, the heart valves and long bones in the body had been harvested. Prior to the autopsy I photographed the victim.

Dr. Poulos' examination confirmed that there was no exit wound in the skull and that slug from the bullet was lodged in the lower area of the neck. Upon removal, the slug was observed to be completely intact except for one small sliver that had broken away. When the autopsy was completed Dr. Poulos advised me that his preliminary findings were consistent with an intraoral contact wound. Dr. Poulos stated that the bullet entered the mouth at a slight downward angle and severed the spine. The path of the bullet was front to back approximately one-half inch to the right of the midline. The slug was kept by the Milwaukee County Medical Examiners Office.

I also obtained a copy of the Milwaukee County Medical Examiner's Demographic Report which is attached to this report.

Further actions in this case are pending the completion of the autopsy report and toxicology results.

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